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MILITARY SURVEILLANCE

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

S. 2318

APRIL 9 AND 10, 1974

Printed for the use of the Committee on the Judiciary

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MILITARY SURVEILLANCE

TUESDAY, APRIL 9, 1974

U.S. Senate,
Subcommittee on Constitutional Rights
of the Committee on the Judiciary,
Washington, D.C.

The subcommittee met, pursuant to notice at 10:10 a.m., in room 2228, Dirksen Senate Office Building, Senator Sam J. Ervin, Jr. (Chairman), presiding.

Present: Senator Ervin.

Also present: Lawrence M. Baskir, chief counsel; and Britt Snider, counsel.

Senator Ervin. The subcommittee will come to order.

OPENING STATEMENT OF THE CHAIRMAN

The subcommittee begins 2 days of hearings this morning on S. 2318, a bill I introduced last November with the co-sponsorship of 34 Senators. A copy of this bill will be inserted at the conclusion of my statement.

The bill provides that military personnel shall not be used to conduct surveillance of the political activities of civilians or civilian organizations except in those limited situations where the military actually has a need for such information to further a lawful objective.

The bill is, at bottom. privacy legislation. It seeks to shield the expression of one's political views from the eyes and ears of Government. It seeks to protect one's associations from the perpetuity of a Government computer. And, it seeks to preserve the promise of a free society where men are not entrapped by their past.

As I contemplate this computerized society we have entered upon, I am reminded of the passage in Lewis Carroll's Through the Looking Glass where the king raves: "The horror of that moment... I shall never, never forget it." "You will, though," says the Queen, "if you don't make a memorandum of it."

A democratic society must be compassionate as well as just. It must be willing to forget past indiscretions and allow its citizens to begin again. But the queen is right. Beginning anew is much more difficult when there are "memorandums" of the past to live down and contend with.

It is no accident that most of the so-called "privacy" bills before Congress today focus upon limiting the "memorandums" that Government agencies are allowed to collect and disseminate on Americans. Protecting privacy, after all, is really a matter of protecting information, of restricting the means by which it is obtained and the means by which it is disseminated.

The dangers to privacy and the constitutional rights of expression and due process of law posed by political surveillance have been widely recognized and I will not dwell upon them here except to emphasize that political surveillance of any kind which is not directly relevant to a legitimate governmental purpose is repugnant to a free society.

It is all the more repugnant when it is carried out by the military and is directed at the political and private affairs of law-abiding civilians. This is true even when the information being gathered is no different from that gathered by other agencies of the executive branch. There is a longstanding tradition in this country that the military will be separate from, and subordinate to, the civilian realm. This policy is embodied in the Constitution and it is embodied in numerous provisions of the U.S. Code.

Thus, the subcommittee opens these hearings conscious of the fact that there is a strong presumption in law and policy against military intrusion into civilian politics in any form. It follows that any exceptions which the subcommittee chooses to make to this policy must clearly define those circumstances in which intrusion may be justified.

S. 2318, which is before the subcommittee, is one attempt to do just that. It contains a general prohibition against military surveillance of persons not affiliated with the armed forces and then suggests four instances in which data-gathering for certain limited purposes may nevertheless be appropriate.

I might say, despite my authorship of the bill, that I retain an open mind with regard to all of its qualifications. They should be regarded as the starting point for debate.

Many people ask me whether military surveillance is still going on. They remember the subcommittee's hearings in 1971, but they are not aware of what became of it. As the subcommittee will recall, the hearings in February and March 1971 disclosed that Army intelligence had carried out a widespread program of surveillance against "dissident" groups and individuals in the late 1960's.

The subsequent reports of the subcommittee—one entitled, "Army Surveillance of Civilians: A Documentary Analysis," published in 1972; and the other entitled, "Military Surveillance of Civilian Politics," published in 1973—concluded that the surveillance had been "both massive and unrestrained." The subcommittee estimated that at the height of the surveillance, Army intelligence alone engaged over 1.500 plainclothes agents to collect information on civilians. This information was stored in scores of data banks across the country, and was routinely exchanged with other governmental agencies. The subcommittee's reports did indicate, however, that in 1971 the Defense Department began to restrict its domestic intelligence operations to the gathering of information essential to the military mission.

The subcommittee staff has been monitoring the effectiveness of these new restrictions since their creation, and I think that it may be worthwhile, as a prelude to the testimony of our witnesses, to describe briefly where I think we now stand.

On March 1, 1971, in the course of our hearings, the Defense Department issued a directive which sought to put an end to the military surveillance of civilians under all but certain exceptional circumstances. It further provided that most of the information which had been collected on civilians in the past would be destroyed.

To enforce these restrictions, the Defense Investigative Review Council (DIRC) was created to monitor the implementation of the new policies. The Assistant Secretary of Defense for Administration was designated as having primary responsibility for domestic intelligence matters.

Subsequent to the issuance of the DOD directive, each branch of service issued its own implementing orders. The DIRC also issued supplementary guidance in the form of studies and policy decisions to all subordinate agencies.

In September 1971 DIRC began a series of unannounced inspections of intelligence units throughout the United States and its territories and possessions. To date, 14 such inspections have been conducted. The subcommittee staff has been provided with the results of the first 11. In addition, the staff has been informed from time to time of the supplementary policy decisions and study reports which have been issued by DIRC.

We have also directed a number of written inquiries to the Defense Department seeking explanations of incidents which have come to our attention. In some cases, the department's responses have indicated improper or at least questionable behavior. I will touch upon these in a moment, but I do want to say at the outset that from what the subcommittee staff has been able to determine to date, the Defense Department has made a good faith and apparently successful effort to get itself out of the business of spying on civilians, at least those living in the United States. In particular:

(1) To date, no significant departures from the operational restrictions imposed by the DOD directive have been found, insofar as the collection of domestic intelligence is concerned. There have been exceptions permitted to the directive's restrictions, but these have been approved in accordance with procedures established by the directive.

(2) Most of the intelligence reports on civilians prepared prior to 1971 apparently have been destroyed. We have the explicit assurance of DOD that all civil disturbance intelligence files have been destroyed. The possibility remains that at least part of the old files are being retained in accordance with the new criteria contained in the DOD directive. But the sheer volume of files whose destruction has been reported to the subcommittee tends to confirm that prior holdings have been dramatically reduced.

(3) The Defense Investigative Review Council appears to be energetically and conscientiously performing its oversight role. Its inspection reports and policy decisions indicate that it is indeed

serious in its desire to limit military intelligence operations to legitimate bounds. It is also apparent that the DIRC has gotten its message across at the "grass roots" level of military intelligence.

Despite these commendable developments, however, I continue to have misgivings about the present regulatory scheme. Say what you will, the only protection which the American people have against a return to the military spying of the past is a regulation of the Defense Department itself. This regulation contains qualifications, exceptions, and ambiguities which permit surveillance even within the confines of an otherwise restrictive policy. If these permitted exceptions to the general rule are classified, chances are they will never come to the attention of the public. What this comes down to is that if the Defense Department should decide to invoke such qualifications and exceptions or, even worse, violate its own regulation, there is no one in a position to say "no." The system of checks and balances which the Founding Fathers so ingeniously wove into the fabric of our Government finds no application here. For this reason, if for no other, I believe a statutory resolution of this problem is called for.

To be sure, the subcommittee staff's follow-up investigation does indicate the Defense Department has achieved significant success in bringing its domestic intelligence operations under control. But it also demonstrates that the potential for continued surveillance is lurking just beneath the surface. Specifically:

(1) The subcommittee has been informed that, under the provision in the DOD directive prohibiting covert penetration of civilian organizations unless approved by the Secretary of Defense or his designees, several such penetrations—"no more than three in any given year"—have been authorized since 1971. Although the subcommittee has not been informed of the details of these special operations, they apparently involved the covert penetration of antimilitary civilian groups who were thought to pose a threat to military personnel or property.

(2) The subcommittee staff has found that the majority of units inspected by DIRC possessed files on civilians or civilian organizations which either were flatly prohibited by the DOD directive or which, if authorized, were being held beyond the time limitations provided by the DOD directive, or DIRC retention criteria.

(3) The DOD directive permits the collection of intelligence on civilians and civilian organizations which constitute a "threat" to Defense Department property and personnel. The subcommittee staff has found, in point of fact, that the "threat" rationale has replaced the "preparation-for-civil-disturbance" rationale of the late 1960's as the primary justification for the current collection and retention of files on civilians. In all fairness, it should be pointed out that the DIRC has attempted to define the term narrowly, limiting it to activities which genuinely menace the military mission. Furthermore, it has required that "threat" information be continuously updated and verified. Nevertheless, it cannot be disputed that the term is a vague one which lends itself very well to subjective interpretation by field commanders and field operatives alike. The DIRC

inspection reports made available to the subcommittee confirm this as a recurring problem.

(4) Although the work of the DIRC has been commendable, I am not without qualms regarding its effectiveness as a "watchdog." Its inspection reports are typically designated "For Official Use Only" and not normally available to the public. Moreover, the two inspections which revealed the most egregious departures from the DOD directive were classified "Confidential." The upshot of this is, of course, that the public will not become aware of any violations of the directive or shifts in policy. The DIRC, for all of its fine work, clearly does not view its role as a public watchdog.

I also would point out that DIRC inspections must, of necessity, be infrequent. There have been only 14 inspection trips since 1971. I suspect that any unit inspected could breathe a sigh of relief for the next 5 or 6 years before the next DIRC inspection would take place. The number of defense intelligence offices is so large that more frequent DIRC inspections are all but impossible.

(5) The subcommittee has been informed that the Defense Investigative Service has undertaken three "plumber" operations to determine the source of leaks to the press of classified defense information. Although the subcommittee was assured that DIS agents interviewed only persons affiliated with the Defense Department in connection with these leaks, there appears to be no limitation on such investigations provided by the DOD directive, even if they were to spill over into the civilian community.

(6) It is clear that the Defense Department maintains strong liaison with law enforcement agencies at all levels of Government. Ordinarily, such liaison is of great benefit to the department in carrying out such legitimate functions as conducting security clearance investigations, conducting espionage investigations under the delimitations agreement, and responding to civil disturbance situatons. Judging from incidents reported to the subcommittee, however, it is clear that liaison with law enforcement agencies constitutes a major pitfall for military intelligence.

To cite a few examples, it has been reported to the subcommittee that the Defense Department participated in the now-defunct Intelligence Evaluation Committee (IEC) of the Justice Department from 1971–73. Participation has been justified by the military's need to prepare for civil disturbances. But the IEC gathered and analyzed intelligence information regarding not only civil disturbances but a host of other "dissident" activities, none of which concerned the mission of the military per se. Although it is my considered opinion that the Defense Department's participation was, in fact, not inconsistent with its own directive, it very well might have been had its representatives not been as conscious of the new restrictive policies as they were.

The subcommittee has also been informed that the Defense Department provided three military intelligence analysts for a communications center run by the Justice Department during the Democratic and Republican National Conventions at Miami Beach. The analysts were provided at the request of the Justice Department on the basis that a civil disturbance situation might develop which would require bringing in Federal troops. The DOD specifically found that this support was not inconsistent with the DOD directive.

Another incident reported to the subcommittee by the DIRC involved a military intelligence unit in San Diego, which, prior to the decision to move the GOP convention from San Diego to Miami Beach, had begun to build its files on dissident groups in the area in contemplation of liaison responsibility with the Secret Service at convention time. The DIRC advised that this activity should be halted.

Occasionally, military liaison with local law enforcement, used for the purpose of investigating military personnel, becomes a pretext for assisting local authorities to investigate civilians. In a case which took place in Prince William County, Va., shortly after the promulgation of the DOD directive, military intelligence agents were assigned to assist local police by posing as members of a drug ring. Ostensibly, they were "loaned" to the local police because military personnel were thought to be involved. As it turned out none were, but military agents helped to identify 29 civilians for the local authorities.

I mention these cases to illustrate that the borderline between permissible and impermissible intelligence activity is sometimes blurred by the contingencies of the moment. Liaison is helpful in the performance of legitimate functions, but it often offers tempting and compelling opportunities to hedge, if not avoid, the parameters of the DOD directive.

(7) The subcommittee notes, finally, that the DOD directive applies only to military personnel stationed in the United States or its territories and possessions. It does not apply to personnel stationed overseas. The DIRC reported to the subcommittee that it had considered expanding the applicability of the directive to overseas posts but had unanimously rejected the idea because it might interfere with the gathering of foreign intelligence by military agents.

Regardless of the merits of their objection, I am not satisfied that the DIRC has chosen to turn its back on the problem altogether. It is one thing for the military to investigate civilians abroad, even American civilians, who are suspected of being agents of a foreign power. It is quite another thing for the military to have its agents watch civilians living or travelling abroad who have no remote connection with any foreign power or its intelligence services. I believe the DIRC would do well to reconsider its decision and draw more precise lines between overseas "intelligence" investigations and overseas "dissidence" investigations.

As has been reported in the press, the subcommittee does have evidence that Army intelligence did, in fact, conduct extensive surveillance of American citizens in West Germany in 1972 and 1973. Most of the groups and individuals under surveillance were what might be described as "political activists" whose concerns focused primarily upon domestic politics in the United States. As far as we have been able to determine, there is no evidence to connect these groups and individuals under surveillance with the operations of any foreign government. The subcommittee is still awaiting the Defense Department's response to its inquiry of last December 10, which dealt with these matters. But I think it is clear that these sorts of operations violate the spirit of the DOD directive, if not its letter. In the minds of many, they mar what had otherwise been a highly successful turnabout.

I do not plan to have these hearings concentrate unduly on overseas operations. I certainly do not think they should divert us from the larger and more significant fact that very commendable reforms have taken place within the United States. I do think, however, that the overseas operations remind us that the issue of military surveillance is not moot.

With this in mind, I intend to submit certain evidentiary materials relating to these operations, now in the possession of the subcommittee, for inclusion in the record of these hearings. Some of these materials are classified and I propose to ask the Department's cooperation in having them declassified.

In conclusion, then, while the Defense Department has taken significant and commendable strides to bring its domestic intelligence operations in line, the regulatory structure has shown itself to be still defective and inadequate as a matter of fully protecting our constitutional guarantees. The rights endangered by military surveillance are too precious to be left to an equivocal policy of self-restraint on the part of the military.

While I would be the first to agree that enactment of a statute offers no cure-all in itself, it is an opportunity to clarify and remedy many of the current ambiguities and shortcomings, and it would go much further in deterring future surveillance than a mere departmental directive.

I am hopeful that the Department will give us its support and its assistance in developing this legislation. I can think of no better way for it to demonstrate to the American people its sincerity in putting an end to domestic spying than to have its support on this legislation. Its 1971 directive established commendable policy guidelines. This legislation only attempts to give them the permanence and dignity they deserve as a part of the law of the land.

Before calling the first witness, I should like to say that without objection from the subcommittee members, I shall have placed in the appendix of the hearing record the past correspondence between the subcommittee and the Defense Department as it pertains to the matters we are addressing. Without objection, I shall also place the evidentiary materials which deal with the surveillance of civilians in West Germany together with an explanation of the materials prepared by the subcommittee staff in the appendix. All references to individuals in these materials will be stricken for purposes of publication. In the case of those documents which are classified, I will instruct the subcommittee staff to seek their declassification prior to publication.

[A copy of the proposed bill, S. 2318 follows:]

93d CONGRESS
1st Session

S. 2318

IN THE SENATE OF THE UNITED STATES

August 1, 1973

Mr. Ervin (for himself, Mr. Abourezk, Mr. Baker, Mr. Bayh, Mr. Beall, Mr. Bible, Mr. Cannon, Mr. Case, Mr. Church, Mr. Cranston, Mr. Eagleton, Mr. Fulbright, Mr. Gravel, Mr. Hart, Mr. Haskell, Mr. Hatfield, Mr. Hughes, Mr. Humphrey, Mr. Inouye, Mr. Javits, Mr. Kennedy, Mr. McGee, Mr. Mansfield, Mr. Moss, Mr. Pell, Mr. Percy, Mr. Randolph, Mr. Ribicoff, Mr. Roth, Mr. Stafford, Mr. Stevenson, Mr. Tunney, Mr. Weicker, and Mr. Williams) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To enforce the first amendment and fourth amendment to the Constitution, and the constitutional right of privacy by prohibiting any civil or military officer of the United States or the militia of any State from using the Armed Forces of the United States or the militia of any State to exercise surveillance of civilians or to execute the civil laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. This Act may be cited as the "Freedom From Surveillance Act of 1973".

SEC. 2. (a) Chapter 67 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 1386. Use of the Armed Forces of the United States for surveillance prohibited

"(a) Except as provided in subsection (b) of this section, whoever being a civil officer of the United States or an officer of the Armed Forces of the United States employs any part of the Armed Forces of the United States or the militia of any State to conduct investigations into, maintain surveillance over, or record or maintain information regarding, the beliefs, associations, or political activities of any person not a member of the Armed Forces of the United States, or of any civilian organization, shall be fined not more than $10,000, or imprisoned not more than two years, or both.

"(b) The provisions of this section shall not apply to the use of the Armed Forces of the United States or the militia of any State—

"(1) when they have been actually and publicly assigned by the President to the task of repelling invasion or suppressing rebellion, insurrection, or domestic violence pursuant to the Constitution or section 331, section 332, or section 333 of title 10 of the United States Code; or

"(2) to investigate criminal conduct committed on a military installation or involving the destruction, damage, theft, unlawful seizure, or trespass of the property of the United States; or

"(3) to determine the suitability for employment or for retention in employment of any individual actually seeking employment or employed by the Armed Forces of the United States or by the militia of any State, or by a defense facility; or

"(4) whenever the militia of any State is under the command or control of the chief executive of that State or any other appropriate authorities of that State.

"(c) As used in this section, the term—

"(1) 'Armed Forces of the United States' means the Army, Navy, Air Force, Marine Corps, and Coast Guard;

"(2) 'militia' has the same meaning as that set forth in section 311 of title 10, United States Code;

"(3) 'civil officer of the United States' means any civilian employee of the United States;

"(4) 'surveillance' means any monitoring conducted by means which include but are not limited to wiretapping, electronic eavesdropping, overt and covert infiltration, overt and covert observation, and civilian informants;

"(5) 'defense facility' has the same meaning as that set forth in section 782(7) of title 50, United States Code.".

(b) The analysis of chapter 67 of such title is further amended by adding at the end thereof the following new item:

"1386. Use of Armed Forces of the United States for surveillance prohibited.".

Sec. 3. (a) Title 28, United States Code, is amended by adding after chapter 171 the following new chapter:

"Chapter 172.—ILLEGAL SURVEILLANCE

"Sec.
"2691. Civil actions generally; illegal surveillance.
"2692. Special class actions; illegal surveillance.
"2693. Venue.

"§ 2691. Civil actions, generally; illegal surveillance

"(a) Whenever any person is aggrieved as a result of any act which is prohibited by section 1386 of title 18, United States Code, such a person may bring a civil action for damages irrespective of the actuality or amount of pecuniary injury suffered.

"(b) Whenever any person is threatened with injury as a result of any act which is prohibited by section 1386 of such title, such a person may bring a civil action for such equitable relief as the court determines may be appropriate irrespective of the actuality or amount of pecuniary injury threatened.

"§ 2692. Class action; illegal surveillance

"Whenever any person has reason to believe that a violation of section 1386 of title 18, United States Code, has occurred or is about to occur, such person may bring a civil action on behalf of himself and others similarly situated against any civil officer of the United States or any military officer of the Armed Forces of the United States to enjoin the planning or implementation of any activity in violation of that section.

"§ 2693. Venue

"A person may bring a civil action under this chapter in any district court of the United States for the district in which the violation occurs, or in any district court of the United States in which such person resides or conducts business, or has his principal place of business, or in the District Court of the United States for the District of Columbia.".

(b) The analysis of part VI of such title 28 is amended by adding immediately after items 171 the following new item:

"172. Illegal surveillance... 2691".

(c) Section 1343 of title 28, United States Code, is amended by redesignating paragraph (4) as paragraph (5) and by inserting immediately after paragraph (3) the following new paragraph:

"(4) To recover damages or to secure equitable or other relief under chapter 172 of this title;".

SEC. 4. The civil actions provided by the amendments to title 28, United States Code, made by this Act shall apply only with respect to violations of section 1386 of title 18, United States Code, as added by this Act, arising on or after the date of enactment of this Act.

SEC. 5. (a) Section 1385 of title 18, United States Code, is amended by striking out "the Army or the Air Force" and inserting in lieu thereof the following: "the Armed Forces of the United States."

(b) (1) The section heading of section 1385 of such title is amended to read as follows:

"§ 1385. Use of Armed Forces of the United States as posse comitatus".

(2) Item 1385 of the analysis of chapter 67 is amended to read as follows:

"1385. Use of Armed Forces of the United States as posse comitatus.".

Senator ERVIN. Counsel will call the first witness.

Mr. BASKIR. Mr. Chairman, our first witness is Robert Jordan, former General Counsel of the Department of the Army.

Senator ERVIN. Thank you, Mr. Jordan, for your appearance.

TESTIMONY OF ROBERT E. JORDAN III, FORMER GENERAL COUNSEL OF THE DEPARTMENT OF THE ARMY

Mr. JORDAN. Mr. Chairman, thank you for the invitation to appear here in connection with this committee's consideration of important and difficult problems concerning, as you phrased it in your letter, "the accommodation of the informational needs of the military with the rights of Americans to privacy and unfettered freedom of expression." I fully recognize the difficulty of the task which the committee has marked out for itself. My experience of approximately 4 years as General Counsel of the Army persuaded me that there is no easy way to sort out the conflict between legitimate information needs and the protection of civil liberties. That the task is difficult is not to suggest that it should not be undertaken. The problem deserves serious consideration, consideration which can perhaps best be given at a time, such as now, when there appear to be no burning issues relating to current operations.

I would like to amplify briefly some of the factors which make the task difficult:

First, the military departments, in my judgment, clearly have a number of legitimate needs to collect and retain some kinds of information concerning civilians.

Second, some of these legitimate needs are of a continuing nature and some, relating to matters such as civil disturbances, not connected with military installations or activities, present an episodic need.

Third. the problem of setting policy must address both collection and retention. It is possible to have a legitimate need to collect, without having a legitimate need to retain. It is also possible to have a legitimate basis for retention without having a legitimate need for collection as, for example, when the collection activity is properly within the responsibility of a civilian investigative or intelligence agency.

Fourth, it is most difficult, if not impossible, to establish verbal formulations as to what is either prohibited or forbidden—that is formulations which are not subject to quibbling and misinterpretation. The quibbling and misinterpretation can take two forms: an effort by civil liberties organizations to give an unduly restrictive interpretation of imprecise language, or an effort by intelligence officials to give every term that interpretation which will maximize the freedom to collect and retain information.

Fifth, it is almost impossible to control abuses merely by the promulgation of policies, whether statutory or regulatory. This is not to say that statutory and regulatory efforts are not valuable, but simply to understand that they are not a total answer.

Sixth, some degree of flexibility is essential in order to accommodate unusual situations which were not contemplated when statutory or regulatory language was drafted. Generally speaking, I favor retaining non-delegable approval authority in the hands of high-level appointed civilian officials as a mechanism for dealing with the extraordinary case.

Seventh, there have been abuses in the past. I am not so naive as to believe that I ever got a fully candid report on all of these abuses—even during the time my official responsibilities gave me a charter to inquire into them. I will have more to say on this point later.

Eighth, my experience has been that it is extremely difficult for appointed civilian officials to deal with middle-level career military intelligence officials and get a straight story. The career intelligence official tends by nature to be secretive, to believe that compartmentalization of information is compelled by an 11th Commandment; and that his own right to determine the need to know of any inquiring civilian official is protected by the 12th. This observation, I am sure, will be misinterpreted by some as an antimilitary remark. I hope that doesn't happen, because I feel I am not antimilitary. Among the most intelligent, honest and candid men I have ever known are many of the career military personnel it has been my privilege to work with. In fact, when sorting out the problems of military surveillance during my tenure in the Pentagon, I received a great deal of help and assistance from two military officers with intelligence responsibilities—Major General Joseph McChristian, who was then Assistant Chief of Staff for Intelligence, and Colonel John Downie—who I understand will testify later today—who handled counterintelligence activities for General McChristian. Nonetheless, we—and when I say "we" I am talking about civilian officials, General McChristian and Colonel Downie—had great difficulty getting a straight story concerning intelligence efforts.

Ninth, it is not possible to discuss military information collection and retention without giving consideration to related activities of civilian investigative and intelligence organizations.

I will have more on this later, but I note the need to collect information may be eliminated if there is ready access to information in the files of the civilian agency when a legitimate need arises. Of course, the necessity for that information to be available on a timely basis is going to be abused.

Furthermore, retention policies may be complicated because the military organization receives an enormous volume of intelligence information from civilian agencies, some of which is of legitimate interest but much of which is not. The military receives massive information from the FBI. Some of that is material which is of a legitimate concern and some is not, and it is all mixed together and it is very difficult to sort out what is legitimate and what is not. That is a practical problem you must appreciate.

With these introductory observations, and before discussing the specific language of S. 2318, I would like to discuss briefly the history of the so-called "Army spying on civilians" problem as it evolved in the period 1967–71.

I cannot profess to any expertise with respect to military information collection activities prior to 1967. If in fact, as some have charged, there were improper information activities relating to civilians having no discernible connection with military functions or responsibilities, these were matters which didn't come to my attention. My principal area of concern during the 1967–71 period was the relationship between military intelligence collection and retention activities and the Army's civil disturbance mission.

As this committee is aware, widespread civil disturbances in the mid and late 1960's had become a source of serious concern at the local, State and national level. Major urban disorders had flared; but until July 1967, they had been contained without an escalation of resources beyond the use of the National Guard in its State militia capacity—as in Newark and in Watts. In late July of 1967, however, disorder in Detroit brought the first use of Federal troops to deal with urban riots since 1943. In the spring of 1968, the death of Dr. King triggered disorders in a number of American cities, and required the simultaneous commitment of regular military units in Chicago, Baltimore, and Washington, D.C. I can well remember the frenetic activity surrounding the Detroit operation in 1967, and the multiple operations in 1968. A recurring problem was that there never seemed to be enough reliable and timely information upon which to make judgments concerning the alerting and prepositioning of troops, their actual commitment, the need for bringing in additional units, and timely Federal disengagement as the disorder was brought under control. Furthermore, military commanders had traditionally been indoctrinated with the view that knowledge of "the enemy" is an essential element of military planning and operations. By use of the term "enemy" I don't want to suggest that the military viewed this portion of the American people as the enemy. However there was a short-term problem with the military on one side and some people engaged in lawless acts on the other. Until that period of time ended, until the disorder was brought under control, the people on the other side were essentially the enemy.

Against this background, and with the peculiar visual acuity associated with hindsight, it is easy for me to see how things got out of hand. I have never felt that the excesses which occurred during this period involved a plot by military personnel to establish a massive information network blanketing the American people. Rather, most of the military personnel involved were trying to be sure that they would be ready to respond to such missions as might be assigned by the President pursuant to the provisions of 10 U.S.C. sections 331–334.

In retrospect, we went wrong in two significant respects: First of all, I believe that civil disturbance operational personnel—and these are distinguished from the intelligence personnel—began to levy on the military intelligence establishment requirements which greatly exceeded the legitimate needs of the civil disturbance mission. The basic mission of the Army was to be prepared on the order of the President to commit Federal troops for the restoration of domestic order when the resources of local and State law enforcement, including the National Guard in its State militia capacity, had been overtopped. There was, in addition, a mission to provide equipment and other support to improve the capability of the National Guard to control civil disturbances without resort to Federal troops. The discharge of these responsibilities did not require the collection or retention of massive amounts of information on petty disorders occurring throughout the United States. There was a legitimate need to develop an assessment of those cities having the greatest potential for disorder on a scale which might require the deployment of Federal troops. These generalized assessments could well have been assembled exclusively through liaison arrangements with local law enforcement officials and community leaders, with perhaps the addition of information taken from published sources such as local newspapers. There was also a legitimate need for somewhat more information on a short-term basis when military forces were alerted, prepositioned or deployed in connection with a specific civil disturbance.

The second way in which we went wrong was that civilian officials such as myself, occupied with a host of other problems, did not adequately inquire as to the nature and scope of the intelligence collection effort. Our complacency was to some extent encouraged by repeated statements in briefings and memoranda prepared by military intelligence and civil disturbance operations personnel which emphasized that data collection was being carried on almost exclusively by liaison activities, at least when there was no actual disorder occurring. I think military intelligence officials located in the Pentagon were in many cases not fully informed and perhaps misled by military intelligence officials at the Intelligence Command at Fort Holabird.

Civilian officials also were not informed with respect to the creation of certain computerized data banks, including specifically those organized at Fort Holabird, Md. and Fort Monroe, Va. Parenthetically, I might add that because of the passion for secrecy to which I referred earlier, it also appeared that Fort Holabird was unaware of the Fort Monroe computer system and vice versa.

Having said that we erred in our ways, it might be useful for me to set forth my views as to the legitimate civil disturbance needs of the Department of Defense. These can best be related to the various typical states of development of a civil disturbance.

First of all, there is a need to assemble data concerning individual cities in which a disturbance may arise. In order for a large-scale deployment of military forces and equipment to take place efficiently, there must be information on the load-bearing capacity and apron size of the cities' airports, the location of potential bivouac areas, the location of essential facilities such as reservoirs, powerplants and telephone central offices which may need to be protected, and a whole host of other similar information. It is also necessary to develop a listing of key local officials, such as police and fire chiefs, who would be important liaison personnel in the event of a Federal troop deployment.

I might add parenthetically here that in the Detroit operation, there really was a gross lack of knowledge and information in the

Pentagon about Detroit and what was going on there. We were at a considerable disadvantage because we just didn't have some kinds of fundamental, objective information about the city readily at hand.

It is not necessary in preparing these city planning packages to obtain detailed information on individual beliefs and associations. However, unless the military is to prepare a planning package for every city, some scheme of planning priorities must be established. This is precisely what was done during 1968–70 in the Department of Defense. Military forces had been assigned the mission of preparing to place 10,000 troops in each of 24 unspecified U.S. cities, plus 30,000 in Washington, D.C. It became necessary to determine which cities should receive priority with respect to civil disturbance planning.

In retrospect, it appears that the civil disturbance planners went overboard in the degree of intelligence data on individuals which they sought to support this planning effort. In my view, assignment of priorities to cities, at best an imprecise business, is best done by a generally informed evaluation of rather well-known facts about the city. I believe that a priority list just as useful as the one which was developed could have been assembled exclusively from published newspaper material, liaison with local and State officials, and use of informed assessments by Federal organizations such as the Community Relations Service and the Civil Rights Division of the Department of Justice. Accordingly, I cannot personally support the notion that civil disturbance advance planning requires the extensive collection of data on individuals, their beliefs and associations, or even their unlawful acts.

On the other hand, when a civil disturbance with a potential for requiring Federal assistance appears imminent, I favor the relaxation of prohibitions on the collection of data specifically focused on the particular disturbance. Thus, I would allow the dispatch of military intelligence liaison teams along with other military observers for the purpose of providing a temporary information system. If the prepositioning of troops in advance of a proclamation under 10 U.S.C. section 334 takes place, further increases in military information gathering are justified.

Finally, if the federal troops are actually committed pursuant to chapter 15 of title 10, there may be a short-term justification for further increases in intelligence activities.

I believe that few will quarrel with the need for information when there is an actual or impending major disorder. The difficulty is that intelligence people, and properly so in view of the objectives of their profession, are "pack rats." There is a strong tendency to keep, organize and manipulate whatever information happens to come into the system. Thus, the principal need with respect to material collected with respect to actual disorder is to assure that strict retention criteria are enforced, requiring the destruction of information collected regarding individuals within a month or so after the disorder has been quelled. This is not to say that military personnel should not be allowed to compile and retain a fairly complete after-action report which describes the operations and the lessons which have been learned from it. I do not believe that detailed information on individuals is a useful element of such after-action reports, although it is certainly legitimate to describe in general terms the cause of the disorder and the nature of the involvement of identifiable groups in the unlawful activities which led to the alerting, prepositioning, or commitment of Federal troops.

I said earlier that there had been abuses in the military intelligence collection effort. I would like to add a few more words on that subject, but before doing so would like to emphasize again that, in my judgment, the intelligence activities which achieved notoriety in the 1969–71 period were never as intensive as most press accounts would have you believe, nor as deliberately targeted upon civil liberties as some organizations have feared. Rather, I think there was a lot of essentially foolish and wasteful use of military intelligence resources to observe and collect information about the most trivial sort of disturbances one can imagine, along with a great many public gatherings which never involved any public disturbance at all. I do not believe that there was any significant "surveillance" in the sense of closely following individuals over a period of time. Indeed, the personnel requirements for such surveillance are such as to virtually assure that very little of it could have taken place. I also do not think there was ever any widespread collection of information on political figures, if you define "political figures" as incumbents or aspirants to public office. I do believe that some misguided intelligence officials kept what were essentially "clippings files" on political figures whom they felt to be "leftist" or otherwise threatening. While I am reasonably settled in my view that the system which was created had very few direct impacts on civil liberties—leaving aside chilling effects—I believe that it created severe hazards of abuse in the hands of the misguided. The hazard was perhaps nowhere as great as with the so-called "computerized data banks" which were created. These systems, filled with a lot of unevaluated "junk" information about individuals and incidents, had an enormous potential for abuse. I am reminded of an example of potential hazard which was well demonstrated by the Fort Holabird biographical data bank. When we had finally obtained a copy of the biographical data bank printout in the Pentagon—after being assured that no such compilation existed—one of my staff members in the Army General Counsel's office flipped through the listings. I cannot now recall the exact format of the biographical listings, but I do recall that they contained a form of ideological code associated with the individual. For example, the letter "Y" might stand for "anti-U.S. subversive." I recall that in looking at the entries for only surnames beginning with "A" and "B" we found the name of an outstanding Army Special Forces colonel and a major general who was a division commander, each accompanied by an ideological code which cast doubt on his loyalty to the United States. As best we could reconstruct what had happened, both of these men were on subscription lists for one of the antiwar underground newspapers which were then much in vogue. For all that appears, their names could have been put on the list involuntarily, or they could have subscribed in order to develop a better understanding of the antimilitary attitudes prevalent among many young people. In any event, based on such flimsy information as this, both of these men had been assigned an adverse ideological code. It is not hard to conceive such a derogatory bit of information subsequently affecting the careers of the individuals involved, perhaps without their ever knowing of the damage which had occurred.

I also mentioned earlier that information collection and retention activities on the part of military organizations could not be examined without also giving attention to the intelligence collection and retention activities of civilian agencies. Many of the same potential areas of abuse exist, whether information is collected and retained by military or civilian agencies, although I appreciate that there are perhaps special elements of sensitivity which come into play where information is accumulated in the hands of those who also control large numbers of men and weapons. Although I recognize that this committee may not wish to examine at this time the entire spectrum of intelligence activities, I do want to go on record as suggesting that the job of protecting civil liberties should not be considered complete merely because military intelligence activities have been brought under control.

I might add, Mr. Chairman, from what I saw of the military intelligence operation over a period of 4 years I felt there was probably less chance of the information in the military files being used for what might be called political purposes than the files of organizations such as the FBI.

With respect to the interplay between military and civilian activities, I believe the committee is aware that in early 1969 the Department of Defense made a strong effort to disengage military intelligence organizations from the collection of information dealing with civil disturbance matters. This effort occurred in the context of preparing a document known as the "Interdepartmental Action Plan for Civil Disturbances," which was approved by President Nixon in April 1969. Although earlier drafts of the plan placed the obligation for furnishing necessary information on the FBI, the key language was inexplicably removed near the end of the process of coordination, at the instance of the Department of Justice. I might add that the effort to disengage the military from the civil disturbance intelligence effort had the strong support of the ranking military intelligence officials on the Army Staff—a fact which should go far toward demonstrating that the civil disturbance information system, whatever its faults may have been, was not a system jealously protected by military officers bent upon establishing dossiers on American citizens having no connection with the military.

So far, I have been speaking about the legitimate requirements for civil disturbance intelligence information. I featured this discussion primarily because it was civil disturbance intelligence which generated much of the controversy concerning military intelligence activities beginning in 1969. I perhaps also featured it because I know more about it, and people tend to talk more about things they know more about.

There are, of course, a number of other legitimate requirements for collecting information regarding individuals. Indeed, S. 2318 recognizes these needs by providing in the proposed section 1386(b) of title 18, certain exceptions to the prohibitions contained in subsection (a).

Among the kinds of activities which generate a legitimate need for information are personnel security programs, protection of military property and functions, and the protection of classified information, whether in the hands of the Department of Defense organizations or residing with Defense contractors. A catalog of these kinds of activities which, in my judgment, generate legitimate intelligence needs can be found in section IV.A. of Department of Defense directive 5200.27. That directive, as the committee is aware, was carefully drafted after the issue of military intelligence operations had arisen, and it reflects a carefully considered effort to delineate legitimate activities. The committee might well use this directive as a guideline for formulating the exceptions in proposed section 1386(b). Any formulation of section 1386(b) which does not provide authority for the activities permitted by the Defense directive ought to be looked at very carefully.

In the interest of brevity, I will not attempt to discuss each of the kinds of additional activity which generate a need for information collection. I will, however, be happy to respond to any specific questions the committee may have to the extent that I have knowledge in the area.

I would like now to turn to specific language of S. 2318 for the purpose of offering a few general observations concerning the current version of the bill. I will not attempt to offer specific language suggestions at this time, but I will, of course, be happy to furnish specific language suggestions to the committee staff if that would be helpful at any stage of this committee's work.

With respect to proposed section 1386, I have a general reaction that it perhaps prohibits both too much and too little. Too little, in the sense that it does not appear to be broad enough to cover military personnel other than officers, and because the formulation "beliefs, associations, or political activities" is too subject to interpretations which will allow retention of considerable information regarding civilians not in any way affiliated with or impacting upon the Department of Defense. Too much, in the sense that the exceptions provided in the proposed subsection (b) do not appear to me to cover the full range of proper intelligence activities.

I mentioned earlier the difficulty of devising verbal formulations sufficiently precise to prohibit only that which should be prohibited, while clearly allowing that which needs to be allowed. I might add, trying to do that is particularly important in a bill which provides criminal penalties. I regret that I do not have any magic verbal formula which overcomes the inherent imprecision of language. However, it appears to me that it would be more precise if subsection (a) were to prohibit investigating, maintaining surveillance, and retaining information regarding persons not members of the armed forces, or perhaps not civilian employees, without adding the qualification regarding beliefs, associations or political activities.

There would thus be a broad prohibition focusing on the status of the individual or organization which is the potential target of intelligence activities. One would then turn to subsection (b) to find all of the allowable exceptions to this broad general policy. In short, in order to justify any form of military intelligence activity regarding civilians or civilian organizations, one would have to find a specific exception in subsection (b) which authorized the activity in question. I believe this approach would lead to greater precision and a better understanding of both prohibited and allowed activities.

If this approach were to be undertaken, it would obviously be important to assure that subsection (b) provides exceptions for every legitimate form of intelligence activity. I have some difficulty with subsection (b) as presently drafted. First, I believe that subsection (b)(1) does not provide sufficient flexibility for the predeployment stages of civil disturbances. As I indicated earlier in my statement, there can be a real need for increased information collection activities where the potential for employment of Federal troops is imminent. It seems to me that this difficulty could be resolved by authorizing the initiation of collection activities upon the approval of the Secretary of Defense or the Attorney General, provided that the approval authority not be delegated below the level of an Assistant Secretary of Defense or the under secretary of a military department or a comparable official in the Department of Justice.

With respect to subsection (b)(2), I fear that it is far too narrow. First of all, I can conceive of a great many activities of legitimate concern to the Department of Defense which do not occur on a military installation, or involve specified acts with respect to "property" of the United States. I have seen a proposed revision of subsection (b) prepared by Mr. Christopher Pyle, which I believe contains a more satisfactory catalog of the exemptions which ought to be provided from the scope of subsection (a). In recommending that the exemption category be examined, I recognize that every exemption contains the potential for abuse. However, it seems to me that not to allow for proper activities is to invite facile interpretations of the language of the bill, and to undermine its long-term integrity.

I am not going to try to enumerate all of the various activities of the Department of Defense which, in my judgment, would legitimately involve activities outside the scope of the exceptions provided by proposed section 1386(b). However, in addition to the need to provide greater flexibility for civil disturbance activities, the bill should certainly take into account questions involving the protection of classified information, and activities impacting upon property or facilities which, while not technically the "property of the United States" are nonetheless employed in connection with government activities or intended for government use. For example, I think most of us would agree that it would be proper for the Department of Defense to have information relating to the theft of military weapons from a manufacturer, even if that theft occurred before title had passed to the United States. I believe, however, that the committee should give careful attention to the views of the Department of Defense as to the categories of activities which must be recognized as legitimate.

One of the most difficult questions which the committee must face is that of assuring implementation of any law which may subsequently be enacted. In that regard, I have some concern with respect to the efficacy of the civil actions which would be allowed by proposed section 2691, which would be added to title 28. I also have strong misgivings about the desirability of the proposed new 28 U.S.C. 2692.

Proposed section 2691(a) allows a personal action for damages without regard to pecuniary injury, by a person "aggrieved" by a violation of proposed 18 U.S.C 1386. Section 2691(b) allows an action for equitable relief when a person is "threatened with injury" by a violation. I have no particular difficulty with the concept of providing an explicit remedy, both in damages and in equity. I would point out to the committee that an unsubstantiated fear of surveillance is a common form of paranoia, and that this sort of provision may well encourage a number of ill-conceived suits. I have in mind the period when I served as Assistant U.S. Attorney in the District of Columbia, and we used to have a constant flock of people in the office wishing to file complaints and get arrest warrants because they thought someone had installed a "bug" in their false tooth or a radio receiver in their refrigerator. That is a common problem, and will be exacerbated by the civil suit provision.

I have even more difficulty with proposed 28 U.S.C 2692. It seems to me that to allow a class action by people who have "reason to believe" that there is about to be a violation of the law is to invite a great deal of unproductive litigation.

I believe that proposed section 2691, standing alone, provides sufficient relief with respect to preventing violations. But perhaps the most important element of prevention is the creation of an ethic within the military intelligence organizations that encourages strict compliance with this legislation, if it is enacted, coupled with periodic and penetrating overview by appointed civilian officials of the Department of Defense to assure that compliance is complete and satisfactory. Imposing a requirement for periodic reporting to the Congress with respect to oversight by the Department of Defense would, I think, be a more productive way of keeping adequate attention focused on the objectives of the legislation than perhaps would civil suits.

Mr. Chairman, this is a complicated subject and one which I have never mastered completely. I have necessarily omitted in the interest of brevity many other points, but I will be happy to amplify any area of particular interest to this committee.

Senator Ervin. I spent many days drawing this bill and I think it is very specific. I think the suggestion you make on page 17 of your statement would prevent the Defense Department from obtaining records about people eligible for the draft. In other words, you say that subsection (a) of the bill should merely prohibit investigating, maintaining surveillance, and retaining information regarding persons not members of the Armed Forces, without the qualification regarding beliefs, associations or political activities. If that were law, the Defense Department could not maintain any records about a pool from which people could be drafted in time of war because that information would relate to people not connected with the Armed Forces, not members of the Armed Forces.

Now, the military spying of the past was done under directives which were less than clear. Military intelligence decided it should spy on everybody who was dissenting from the views of the administration and they proceeded to do that. The president of the University of Minnesota testified before this committee that for 18 months military intelligence agents kept his campus under surveillance and that the only thing that happened during that 18 months was that a plate glass window was broken. Nobody ever discovered who broke it or why it was broken.

The truth is, the military has no business acting as a national detective force or a national police force.

My section (a) just makes it illegal to exercise surveillance regarding beliefs or associations or political activities. That is very specific, far more specific than saying that we can't investigate or maintain surveillance or obtain information of any kind.

Now, with respect to subsection (2)(a), you suggested we needed more flexibility. I don't see how the military can be given more flexibility and not open the door to abuse. This act doesn't apply to them at all when they are actually and publicly assigned by the President to the task of defending invasion or suppressing insurrection or domestic violence pursuant to the Constitution of section 331, 332, and 333 of title 10 of the U.S. Code. I don't know how you can give more flexibility when they are called out under those circumstances.

Then, with respect to subsection (b), you suggest that the bill is defective in that it only applies to criminal conduct committed on military installations or involving destruction, damage, theft or unlawful seizure, or trespass on the property of the United States. You say that ought to be amended. Do we not now have multitudes of State laws prohibiting theft of property, even in cases where title has not passed to the United States?

Mr. JORDAN. Mr. Chairman, I think the answer to your question is, yes, there are a multitude of State laws, but my suggestion was that it seems to me artificial to suggest that military interest in, let's say, the theft of a shipment of 1,000 M–16 rifles, should turn on the question whether title has passed at the time the theft took place. There might well be a legitimate military interest in knowing what has happened to weapons which were intended to be turned over for military use.

I would like to say, Mr. Chairman, that my comments about the drafting approach were made with full recognition that this is an enormously difficult subject—and I think the bill has a great many difficulties. What I was trying to do was to suggest that the "beliefs, associations, political activities," are the kind of terms that I feared might be given an interpretation different from that which you intended and members of the Congress might intend in passing this legislation.

The great difficulty I always had with these intelligence programs was the invisibility of them. In other words, they are hidden down in the bowels of the organization and it is very difficult to put your finger on and get a specific catalog of exactly what everybody is doing. That is why it seemed to me that having a broader prohibition would force you to give more attention to the specific exemptions and require the Defense Department to come in and satisfy this committee and the Congress that each of the programs which it wanted to conduct had a specific justificaiton. I certainly was not trying to undercut the scope of the bill, and I really think that my suggestion was intended to improve its protection against the very hazard you mentioned.

Senator Ervin. It depends on how the legislation is drafted. I always thought we ought to have legislation drafted so it says what it means and it means what it says. When you draft legislation general enough to catch all the tadpoles as well as the whales and sharks you frustrate that objective. I don't think anybody who understands the English language would have trouble in interpreting this bill, frankly. I do not favor drawing criminal laws with general language. I do not believe you ought to punish people under a criminal statute which is so vague they can't interpret it.

Mr. Jordan. For example, Mr. Chairman—the kind of problem that concerns me—suppose you have activities which some people might call of a dissident nature, but directed against the policies of the government, so to speak. I think it would be very important to make clear in the legislative history if that is intended to be within the scope of the term "political activity." Some people interpret it in the Hatch Act sense. The Hatch Act prohibits certain political activities on the part of Federal employees, but that has been narrowly interpreted to apply to party activities, Republicans versus Democrats and that sort of thing.

I think an intelligence official who wanted to thwart the purpose of your legislation might say, what does it mean. We have an established body of law and I will turn to the Hatch Act and I find, by George, I can still do lots of things.

Senator Ervin. Frankly, any intelligence man should understand this legislation. I think it is in very understandable terms.

Mr. Jordan. I think I understand what you have in mind. I would suggest that if the bill is retained in that form that you should, shall we say, embellish that interpretation in the legislative history so it is not susceptible to the potential abuse I am talking about.

Senator Ervin. I think statutes should be written so plainly that they are understandable. I don't believe in interpreting statutes by legislative history. I think a statute ought to be interpreted by its own language, to quote the words of the Scripture, "words man can read nor err in so doing."

I put a provision in here that the statute doesn't apply when elements of the Armed Forces are used in determining suitability for employment or retention of employment in the Armed Forces of the United States or in the militia of any State. I don't see under normal circumstances how the Armed Forces have any legitimate interest in making inquiries about civilians except under those circumstances.

Mr. Jordan. Well, you know, I certainly think the system could function if that were the rule, but a lot of things come up in the course of running a large military organization. For example, a function is going to be conducted on a military installation and some people are going to be in attendance. It is a very natural tendency on the part of the commander to want to know who these people are. Will there be a problem with having them here, just as the President might be concerned about whom he invites to the White House or a reception. That has been a constant problem of White House staffers over the years. You invite a whole bunch of people to a reception, and it turns out one is under indictment for income tax evasion or something worse, and you do get these problems.

But I think that particular exception, Mr. Chairman, is well drafted and I have very few quarrels with that one.

Senator Ervin. I don't think insofar as military and civilians are concerned, that military intelligence agents are entitled to have such curiosity as that which killed the cat.

Mr. Jordan. Well, I certainly think the degree of curiosity exhibited in the past was excessive, and I fully support the objective of bringing it under control.

I wonder if I could comment on your remarks about the civil disturbance. Traditionally, 10 U.S.C. section 331 through 334 had been invoked when the decision to employ Federal troops takes place. The proclamation was issued under 334, and that becomes kind of a public event.

As I indicated in my statement, you may get no advance warnings of a disturbance. Detroit was of that nature and some of the disturbances when Dr. King was killed were of that nature. Before the President or anyone else is ready to say, yes, we will commit Federal troops—there is a reluctance to do that because it runs counter to our civilian traditions in this country, and it is a very major act taken very reluctantly—you do have some need to know things.

Now, one of the problems that existed during the era when I was in the Pentagon was that the military people could not get adequate, timely evaluations of the situation from the local law enforcement people or from the FBI. The local people, frankly, tended to be alarmists in their evaluation of the situation. I think if we put Federal troops in a city every time that a local official said we need them, we would put them in far too often.

The FBI is not equipped to be responsive on a timely basis to the needs of by the hour intelligence, and it was literally by the hour. You may recall in Detroit, Mr. Vance, who had been Deputy Secretary of Defense, was recalled for a special mission to go to Detroit as a special representative of the President. He went out because of the need to get firsthand evaluations. I think that was a good idea, probably a lot better than having an excess of Army intelligence agents on the street. But on the other hand—Mr. Vance was supported by Army intelligence activities during that phase, and they were helpful to him—I think that is a legitimate phase and I wouldn't want to expand that activity at earlier stages, but I think when there is an imminent disorder you might consider whether some flexibility might be introduced to deal with that problem.

Senator ERVIN. If you take that rationale, you might put all civilians under surveillance by military personnel at all times, because there is always the possibility that any of us might go berserk. I think the civil disturbance statute has been abused. It plainly says that before the President shall use the Armed Forces to suppress civilian activity in this country, that he shall issue a public proclamation calling upon the insurgents to return within a reasonable time to their homes. There have been recent years when they move military forces simultaneously with the proclamation. There are not many civilians in this country who are going to go to war with the Army. If the President would issue a proclamation calling on the persons to disperse and telling them he will use the Armed Forces to suppress them, it gives them time for sway and to return to their homes. Your rationale might be desirable from the standpoint of those who are not too adverse to the use of the military to suppress the civilians, or their being used to do some undercover detective work. But we are in a bad fix if the local police officers and the FBI cannot determine what the condition of the communities is in which they live. I don't think there is any great danger of a civil disturbance arising without the local law enforcement officers knowing the potentiality of it.

Mr. JORDAN. Well, I believe, Mr. Chairman, that it would be perfectly feasible to have a situation with the Department of Justice, for example, assuming the full responsibility for making that early evaluation.

We were frankly not very successful in bringing off that objective during the period I was in the Pentagon. It wasn't for lack of effort. We tried to get the Department of Justice to increase its activities, so that the military could be disengaged, a number of times. The last time a major effort was made was in the early months of 1969. The new administration came on board and there was a concerted effort, as I indicated, to get language in the interdepartmental plan and take military action out of the civil disturbance business.

Now, I have not been officially associated with that problem for almost three years. It is not my understanding from what I know that that problem has ever been satisfactorily solved, nor has the Department of Justice undertaken to adequately discharge that mission.

I would have no hesitancy accepting a structure in which the Department of Justice had that responsibility. I said a couple of times that I didn't think you could separate the military problem from the civilian problem. I think there is a threat to civil liberties of too much collection of material by anybody, whether they wear a green suit or blue suit or flannel suit.

I regret very much the Department of Justice was unwilling to undertake a greater burden. I think very many of the problems your committee has had to deal with might have been obviated had they done this.

Senator ERVIN. The President is the only man in the country with the power to call out the Armed Forces to suppress civil disturbances, and the Department of Justice is under his control and the FBI is under the control of the Department of Justice. So I don't see why the President of the United States can't use the FBI to supplement the information that he necessarily gets from the local law enforcement officers to handle civil disturbance situations without converting the Armed Forces into a national detective agency.

Mr. JORDAN. Mr. Chairman, I trust that in the current situation, the FBI is under the control of the Department of Justice and the President. That was a question in serious doubt during most of my tenure in the Government during Mr. Hoover's period as Director. We found it extremely difficult to get the FBI to cooperate. They seemed to be unwilling to assume the risks involved in having the responsibility for civil disturbance intelligence.

Frankly, I think it is well known that the Attorney General—various Attorneys General, Democratic and Republican, have not always found it very easy to get the FBI to do what they wanted it to.

Senator ERVIN. Yes, because they are civilians like I am, and they think there is no place for the military to be doing law enforcement or detective work. We were never able to find out who directed the Army to spy on civilians in the late 1960's. I have to assume it came from the President of the United States, because he is Acting Commander in Chief, but nobody would ever tell us. I think the Army can get intelligence better than a congressional committee, because I could never get either one of the commanders responsible for military intelligence to come down and testify. I was told by the Secretary of Defense when I asked for witnesses that the Department of Defense has the prerogative to select the witnesses who will appear before this subcommittee. Also, I was told by the General Counsel for the Department of Defense—on one occasion the Department of the Army, that is, Mr. Buzhardt—that he didn't think the Congress had any business with the information I was seeking or the American people were entitled to know about it.

Mr. JORDAN. Mr. Chairman, I didn't agree with that philosophy then and don't now, and I think the committee was entitled to have those officers over here, and I think hearings on the development of the legislation would have been facilitated had you had them. I agree with you on that point.

Senator ERVIN. Now, there is a lot of trivia, as you say, even in that garden of Eden of North Carolina. A U.S. Senator went down there to make a public speech—it wasn't me—and a military intelligence officer who said he couldn't testify because he might suffer reprisals, went down there to report on this man's speech—a U.S. Senator—a published speech.

On one occasion I made a speech and there were about seven pickets from the NAACP, very peaceful, and inoffensive, deploring my speech. Lo and behold, I discovered that information got into one of the computer systems of the Army. I just think that people who carry things to that extreme—these seven pickets were only exercising their first amendment right to protest—ought to be kept out of detective work until they are actually assigned under the statute.

Mr. JORDAN. Mr. Chairman, it may be that a way to deal with this problem would be to use the proclamation earlier as you have suggested and invoke the authority after the proclamation. Frankly, the assessment has been that the proclamation doesn't have much impact for large urban disorders, so there has been a tendency to downgrade it. Perhaps you could issue the proclamation early and after that begin the assessment of the situation.

I would want to resist any procedure that would tend to make you commit Federal troops earlier than you ought to. I think that is a major step that ought not to happen often, but only when the situation clearly requires it. I would like to see a system which defers the decision to put troops in, because use of troops is not consistent with our civilian traditions in this country. We ought not to rush into those situations.

Senator ERVIN. I agree with you on that. I think before the President issues a proclamation most of the people would return to their homes, because I don't know of many people who want to get involved with the Army. I think the President of the United States, who has this responsibility, is not precluded from getting any information from any source, local law enforcement officers, or from the FBI. This bill only prevents him from using the military intelligence as a national detective force prior to the time he assigns them to action under the statute.

Mr. JORDAN. Mr. Chairman, I don't know, of course, exactly what your plans are for the hearings, but if I could be so bold as to make a suggestion on hearings, a subject you know a great deal more about than I do, and I recognize that. But it seems to me it would be useful to have the Department of Justice give you a current assessment of what they are prepared to do in support of these kind of problems because that would be relevant information for the committee to consider.

Senator ERVIN. We informed the Department of Justice we would have been glad to have them testify, but they have shown no disposition to testify.

Mr. JORDAN. Mr. Chairman, I think you ought to bring them down here.

Senator ERVIN. Well, I don't think we need much more delay in enacting the statute. It says the military should stay off the civilian grass, not trespass on it. I think it says so in very plain words, and I think it makes every legitimate exception in very plain words.

Does counsel have any questions?

Mr. BASKIR. Mr. Jordan, you mentioned in your testimony on page 14 that at the time the interdepartmental action plan for civil disturbance was being prepared, the Department of Defense had prepared language which would have made it clear what the Army's proper role was—in this case, what the Army's proper role was with respect to collecting intelligence. Do you happen to recall what the language was, or do you have a copy of it?

Mr. JORDAN. Mr. Baskir, I don't recall it precisely, and I would be reluctant to try to recall from memory. I had a copy of one of the drafts. But the thrust of the language was a clear assignment of the mission to the FBI, Department of Justice, to conduct the intelligence collection activities necessary to support civil disturbance. By way of history, I think what had been happening was that frankly the military intelligence people in the Pentagon, Department of Army staff, were not at all happy with the requirements levied upon them by the civil disturbance operating people. They would say, look, we are given this job to do, prepare to have 10,000 troops in 24 cities and 30,000 in D.C. There are certain things we have to know in order to do that. We don't care where we get it from. If you can get the Department of Justice to do it, fine, but if you can't we still have a problem. The military intelligence people weren't particularly happy with this assignment.

We had tried over a period of time to get Justice cranked up, and then in 1969 there was this language that went in and stayed through several drafts up until very near the end. We were trying to prepare a plan to be ready for what was feared to be a recurrence of riots on the anniversary of Dr. King's death so there was an effort to kind of rush this thing through in the latter part of March because the anniversary was in April. At the last stage this language dropped out and a sort of wishy-washy sentence was inserted in lieu of it. I would be happy to try to find anything I have in my records to clarify that.

Mr. BASKIR. That would be helpful, because the history of that 1969 plan is a little bit hazy. The subcommittee has had some information with respect to that process, but I don't think our knowledge is precise. My recollection is that incorporated within the material prepared by the Department of Defense, was a fairly explicit statement that constitutional and legal traditions were to the effect that this was not something the Army or the military ought to be doing and that it was quite properly the job of the Justice Department. Towards the end of the interagency negotiations, I believe, the Deputy Attorney General or perhaps the Office of Legal Counsel, suddenly dropped out this language reflecting, I expect, a conscious decision that the Army's view of its constitutional role was incorrect or was not necessary to have stated.

Mr. JORDAN. Well, I think frankly one of the problems was that—this may seem strange, but military organizations were much more concerned about the propriety of their constitutional role than the civilian organizations were at that time. We took the matter quite seriously and were quite concerned about it, and that same degree of concern was not always reflected in those with whom we dealt.

Mr. BASKIR. The final language said the information could be collected from any source, whereas the Department of Defense draft says that "any source" couldn't really include the Department of Defense because of the constitutional traditions. I expect in the legislative work done in the Office of Legal Counsel in the Department of Justice—by rejecting the limitation that was placed or proposed to be placed by the Department of Defense—the Office of Legal Counsel was of the opinion there was no constitutional limitation against collecting this information from any source. It seems to have been a fairly conscious decision on the part of the Justice Department and their legal office there.

Mr. Jordan. Mr. Baskir, I think in fairness to the Office of Legal Counsel, which is an institution I have a high regard for, that change did not take place in the Office of Legal Counsel. The initial drafts were coordinated between my office and Assistant Attorney General Rehnquist and his staff. The language that spoke, and I now recall the concern—something about recognizing the constitutional limitations on the role of the military and so forth—that language stayed in beyond the stage when the Office of Legal Counsel sent back its suggestions on our draft. My impression is that there has been no difficulty in the Office of Legal Counsel with that statement; it occurred at higher levels of the Department as a result of coordination with the FBI.

Mr. Baskir. As I said before, our information of that process is fairly spotty. We could not trace that language through the Office of Legal Counsel. All we could tell was it went to the Office of Legal Counsel and when it came out, it had been changed.

Senator Ervin. When we started our hearings on the use of military intelligence to spy on civilians, the Secretary of the Army appeared before us on the first day of the hearings, which was in March, and testified that the day before, they had rescinded the directives under which the surveillance had been carried out and future surveillance could not occur again without, as I understood it, the specific authorization of the Secretary of the Army. Only yesterday I heard before a congressional committee which sat across the hall a couple of floors up the testimony that during the 1972 election a military intelligence unit in Germany infiltrated a group of civilians whose offense apparently was that they were supporting George McGovern for President. Later they changed their name to Concerned Americans in Berlin, and the Army continued to infiltrate. They ultimately came to the conclusion that the constitution of the organization was in harmony with the Constitution of the United States. Now, that was a clear surveillance of Americans abroad where they couldn't have done much harm to the United States—merely because they were exercising their political rights. That is the reason I just don't believe the military intelligence should ever have any business in exercising such power as that. That is the reason this bill is here.

Of course, I don't know whether it would apply to German civilians or not, but it would cover the United States.

Mr. Jordan. Mr. Chairman, there is an old saying that you can't legislate common sense.

Senator Ervin. But you can put a lack of common sense in jail.

Mr. Jordan. That is certainly true. If it were possible to draft a statute that said everybody is going to exercise good common sense, a lot of the problems of legislation on this and many other subjects would fall away. I don't guess you can do that, but an awful lot of the things that have taken place have reflected bad judgment and some of these things very much need to be brought under control.

My only plea to you and the Congress is that you listen—skeptically if you wish and perhaps cynically in view of the history of these events—to the justifications offered by the Department of Defense for their particular programs. You may not accept all of them and perhaps some of them you ought not to accept. But it is a complicated situation. There are lots of programs over there, and I think if you listened to them, even with a healthy skepticism, you may find they have some useful suggestions to offer.

Senator ERVIN. Well, I think the easiest way to make people exercise common sense is to permit them to do it and punish them if they don't. I think this is a very plain statute. It says what it means in honest language. I don't think there is much room in quibbling over this. You can quibble over anything. I know you share a large measure of the views I have about the use of the military, but I want to say in conclusion that whatever your reservations about the bill the military can't act as a national police force and it can't act for law enforcement purposes except when called out by the President of the United States pursuant to the Constitution. That is what the bill says.

Thank you very much. I appreciate your appearance.

Mr. JORDAN. Thank you very much, Mr. Chairman.

Senator ERVIN. Counsel, call the next witness.

Mr. BASKIR. Mr. Chairman, our next witness this morning is Mr. David E. McGiffert, attorney, former Undersecretary of the Army from 1965 to 1969.

Senator ERVIN. I want to welcome you to the committee and express our appreciation for your willingness to appear and give us the benefit of your views with respect to this proposed legislation.

TESTIMONY OF DAVID E. McGIFFERT, ATTORNEY, FORMER UNDERSECRETARY OF THE ARMY

Mr. McGIFFERT. Thank you, Mr. Chairman.

I appreciate the opportunity to testify. As you know, I was Undersecretary of the Army from late 1965 until February 1969. In that position I was assigned responsibility for coordinating the Department of Defense's response to civil disturbance.

I might digress for a moment to say that Mr. Jordan's excellent statement has covered a great many points, many of which he is far more familiar with than I am, since I left in early 1969. Other witnesses will, I understand, deal in considerable detail with the problem of drawing the line between legitimate and inappropriate military intelligence activities.

I thought it might be most useful if I concentrated primarily on informational needs or lack of informational needs in the context of civil disturbance control.

We have a long-standing tradition in this country of minimum intrusion by the military into the political process. That is a tradition we should maintain. I do not believe any responsible man in uniform would have it otherwise.

I think we would also all agree that surveillance of individuals and organizations, no matter by what government agency, may invade privacy, may inhibit free expression and association, and may in general exert a chilling effect on the activities monitored. In my judgment it follows that such surveillance should not be permitted unless justified by a compelling interest of our society as a whole.

The military surveillance and other activities revealed by the subcommittee's investigation principally grew out of pressures generated by a compelling need to control the civil disturbances of the 1960's with minimum loss of life and damage to property. I do not believe evil motives were in any way involved. What happened, in my judgment, flowed from a sense of crisis, combined with overly general directives from the top to a highly decentralized bureaucracy underneath.

However, on the basis of my own experience, I can testify that in relation to the types of disturbances we had in the 1960's—typified by the riots following Dr. King's assassination—there is no compelling military need for predisturbance political surveillance either by the military or by any other organization. The reason is simple: the information gathered is useless in terms of the military's civil disturbance responsibilities.

One of the lessons learned time and again in the 1960's was that control of civil disturbance with minimum loss of life and minimum injury to persons and property requires large numbers of law enforcement personnel—whether they be police, militia, or Federal troops—on the scene quickly. The fewer such people and the more slowly they get there, the greater the likelihood of damage in the interim and the greater the likelihood that physical force will actually have to be used by the law enforcers when they get there. From the point of view of the Armed Forces, this means that the higher the alert status of troops, and of their airlift, the better the potential civil disturbance control capability.

But it is infeasible continually to maintain a high state of alert. And, in my rather considerable experience, it is also infeasible to orchestrate alert postures, both geographically and over time, in a way which would anticipate with the needed accuracy the time and place of the outbreak of the kind of civil disturbance we had in the 1960's. The Detroit riot flowed from a confrontation with police at a bar. Dr. King was shot without warning. All the political surveillance in the world, together with the most ingenious and complete recordkeeping system, would not have given us the proper clues for alerting or prepositioning troops in these circumstances.

There is, of course, another type of advance information which is feasible to obtain and is necessary for rapid and effective intervention by military forces in civil disturbance situations. This is the physical information essential to proper planning: access routes, bivouac locations, command and control data—including the identity and location of the relevant State and local government officials—and so forth. The response to the riots in this city 6 years ago are a good illustration of this kind of preplanning based on such information. That preplanning had, for example, included physical reconnaissance several months earlier by the relevant unit commanders, a reconnaissance which included getting to know the police precinct captains with whom the commanders would need to work if the balloon went up.

This kind of information and contact on a relatively low level is also needed at the senior command level. The senior military commanders need to have a reasonable amount of information about what civilian officials are in charge of which functions and how they interrelate. By advance contact they ought to establish a working personal relationship with the relevant senior civilian officials so each will understand the other's problems and, if possible, their personal idiosyncracies. Also, there is no doubt that the President needs advice, independent of local officials, as to the seriousness of the situation so that he can determine whether to authorize Federal troop intervention. For this, dispatch of Federal personnel, both military and civilian, to the disturbed area prior to Federal intervention was standard practice starting with the Detroit riots and should continue to be.

I might digress here a minute, in view of your colloquy with Mr. Jordan on this subject. The kind of advance evaluation by Federal officials which I am concerned about is an evaluation which takes place prior to any proclamation but after the riot has started. At this point there is no question that there is a disturbance. The only question is, can the local law enforcement agencies—police and National Guard under State control—deal with it or can they not. As I think Mr. Jordan indicated, it would be, I think, unwise for a President to rely wholly on the evaluation of local officials. I believe that President Theodore Roosevelt, for example, got very badly burnt when he did so and discovered that he had put in Federal troops to break a strike although in retrospect it was not at all clear that there had been a need for Federal troops in order to prevent loss of life or destruction of property which could not be dealt with by local police forces.

So I would urge you seriously to consider this need for evaluation by the President through his advisers once a riot has started.

To be very concrete, President Johnson did this in Detroit. He sent Mr. Vance, who was Deputy Secretary of Defense. Mr. Vance took with him a senior official of the Department of Justice as well as one or two senior military officers. In the riots that followed Dr. King's assassination, Fred Vinson, who was an Assistant Attorney General, and General York, who had one of the airborne commands whose troops would have gone and did indeed eventually go to Baltimore, went to Baltimore after the riots began at the President's request to determine whether there was likely to be a need for troops. In this city, Warren Christopher, the Deputy Attorney General, and General Haines, who I believe at that point was Vice Chief of Staff, made the same kind of evaluation during those hours after the assassination and before the President finally issued his proclamation—an evaluation which was designed to try to give the President advice from people for whom he had respect and were independent of the local authorities as to what he ought to do in relationship to Federal troops.

These kinds of contacts and the type of information gathered probably literally involve overt surveillance. But it seems to me that they are highly desirable and fall—or should fall—outside the prohibition of the proposed legislation.

Senator Ervin. I agree with you. This only prohibits surveillance of political associations or political activities.

Mr. McGiffert. Well, that is fine, Mr. Chairman. Then we are in agreement. It was a little difficult for me to tell just from looking at the language what the——

Senator Ervin. I think political activities are activities by which people relate to government, and I think should be legitimate and lawful. I don't think the word political, although sometimes having a bad connotation, involves risks.

Mr. McGiffert. You must remember that some of the information which people like Mr. Vance or others who go to the riot scene for purposes of evaluation will receive from local officials is political type information.

Senator Ervin. It is all right to receive it from local officials. It is they who should collect such information. I don't think there are nearly as many legal ghosts in this thing as Mr. Jordan envisions.

Mr. McGiffert. Although the large urban civil disturbances of the 1960's were in my judgment essentially invulnerable to advance prediction with any relevant degree of preciseness, one can hypothesize two other situations where the uselessness of advance political surveillance might seem less clear. First, although it seems highly unlikely, one can conceive of a major riot stimulated by a covert conspiracy. If precise enough, advance knowledge of the plans of such a group could be useful for orchestrating alert postures. Assuming for the sake of argument that surveillance of such group is appropriate, it seems to me that it is clearly a job for the local police or the FBI and not for military personnel—not only because of our traditional barriers to military involvement in civilian activities but also because it is a job for which FBI personnel are trained and Defense Department personnel are not.

A second type of situation involves an overtly planned demonstration which seems to have the potential for getting beyond the control of local law enforcement authorities. The descent of the New Left on Chicago for the 1968 Democratic Convention and the march on the Pentagon in the fall of 1967 are two examples.

Here the problem is not one of time frame—that has been publicly announced by the demonstrators. The problem is rather one of predicting numbers, lines of march, and the like, so as to know how many law enforcement personnel are likely to be needed and where. Some of the relevant intelligence is purely physical; for example, how many buses have been rented by the out-of-town demonstrators. But some might be political in the sense of trying to infiltrate the demonstrators' planning sessions. Personally, I find the latter objectionable as long as the sponsoring groups appear to be law-abiding citizens. In any event, it does not seem to me that either tradition or training qualifies military personnel for such an intelligence role. On the other hand, any legislation should not prohibit the Defense Department from receiving information from civilian agencies, even if political information is intermixed, where a threat to a military installation is involved or when there is a reasonable chance that the President may have to order Federal troops to intervene and the information is clearly pertinent to preparations to do so.

For all these reasons, I support the thrust of your bill. I have some concern that its literal language goes too far in relation to legitimate concerns of Federal military forces in civil disturbance situations.

I also have some other reservations. I am not sure, for example, that criminal penalties are appropriate at this stage. As far as I know, the past activities, now sought to be forestalled for the future, were due to zeal or misunderstanding rather than evil motive. Also, the inherent problems of draftsmanship in this kind of legislation can lead not only to unjust punishment but also to prejudicial vagueness in the context of criminal prosecution.

In addition, I don't believe the bill adequately takes into account the military's legitimate domestic investigative activities and data collection. Others more familiar with these needs can give you better advice than I, and I hope the subcommittee will listen carefully to the testimony of the Defense Department in this regard. But I would note that the bill seems to prohibit investigation of genuine threats to on-base security arising in the immediately contiguous off-base area if the activity could be characterized in any part as political. And, although this may appear silly, and I am sure the bill is not so intended—the bill would seem literally to prevent the legislative liaison offices of the Defense Department from having on file public information concerning members of Congress which is useful in providing the assistance which you expect from those offices.

Finally, by singling out defense personnel, military and civilian, the bill seems to me by negative implication to suggest that the prohibited activities are legitimate if conducted by civilian agencies. In my view, political surveillance of law-abiding private citizens or groups is inconsistent with the tradition of a free country, whether conducted by military or civilian agencies.

Thank you very much, Mr. Chairman. I will be happy to answer any questions.

Senator ERVIN. With reference to your concern with military liaison officers, I would think we can get similar information out of the Congressional Directory and Who's Who on matters of that kind.

Mr. McGIFFERT. I agree with you. That is the kind of information, however, which literally the bill seems to prohibit collecting, even though it is from a public source.

Senator ERVIN. I don't think it is intended to do that.

Mr. McGIFFERT. Well, I don't believe it is either.

Senator ERVIN. It prohibits the use of the military to maintain surveillance over or record or maintain information regarding beliefs or associations or political activities of any person not a member of the Armed Forces of the United States.

I find myself in substantial agreement with many things you say, in fact with most of them. You state on page 2 of your prepared transcript: "I do not believe evil motives were in any way involved," that is in the use of the military in these urban riots during that period of time. You say: "What happened flowed from a sense of crisis, combined with overly general directives from the top to a highly decentralized bureaucracy underneath." I think that is undoubtedly true. I agree with you.

I have a great respect for the military, because I think that these people perform the most essential service of anybody in our Government, that is, to insure our national security and survival. I don't think average military officers relish being given the assignment to do detective work and regret whatever they are required to do incidental to repression of civil disturbances.

I also don't think there is anything in this bill that would prohibit the Army from having physical information that, as you state on page 4 of your transcript, is "essential to proper planning: access routes, bivouac locations, command and control data, including the identity and location of the relevant local and State government officials, and so forth." I don't think this bill would affect that at all because it is restricted to exercise of surveillance for the purpose of taking information as to the beliefs and associations and the political activities of people.

I am really rather intrigued by your closing observation: "Finally, by singling out the defense personnel, this bill seems to me by negative implication to suggest that the prohibited activities are legitimate if conducted by civilian agencies." I don't know why there is any necessity to talk about civilian activities or law enforcement officers when you are trying to regulate the use of military for detective purposes. In other words, it was never my intent to cover civilian agencies, either to restrict them or condone their tactics. I think this is a pretty clearly drawn law. It was very hard to draw. I drew about 15 versions of it before I got one I was satisfied with. I am satisfied now because I think it is so plain that there is no room for construction. It is awfully bad for a legislator who happens to be a lawyer to draw a law of that kind because it decreases the employment of his brethren of the bar. Some time ago I had a professor of law at the University of North Carolina at Chapel Hill who said that the reason so many of our laws are so vague and indefinite, he suspected, was that they were drawn by lawyers in order to promote litigation to determine the meaning. I don't think we should have such trouble with this bill.

I thank you very much and appreciate your statement, and especially the statement that you agree in principle with the idea that motivates the bill.

Thank you very much.

Counsel, do you have questions?

Mr. BASKIR. No.

Mr. McGIFFERT Thank you, Mr. Chairman.

Senator ERVIN. Counsel, call the next witness.

Mr. BASKIR. Mr. Chairman, our next witness is Col. John W. Downie.

Until his retirement last year, Colonel Downie served in a variety of important counterintelligence assignments here in the United States for the Army.

From July 1968 until April 1971 he was director of counterintelligence in the office of the Army's Assistant Chief of Staff for Intelligence.

In early 1971 he was in charge of a special 30-man task force appointed by the Army Chief of Staff to investigate charges of military surveillance in preparation for our hearings that year.

Later, Colonel Downie served as Deputy Commander of the U.S. Army Intelligence Command.

Mr. Chairman, accompanying him is Mr. William J. Bowe, an attorney and former domestic intelligence analyst with the Army's Counterintelligence Analysis Branch who worked with Colonel Downie.

Senator Ervin. I wish to welcome both of you gentlemen to the committee and express our appreciation for your willingness to come and give us the benefit of your views in respect to what I consider an important piece of legislation, not only from the standpoint of privacy of civilians, but also from the standpoint of the military.

TESTIMONY OF COL. JOHN W. DOWNIE, U.S. ARMY (RETIRED); ACCOMPANIED BY WILLIAM J. BOWE, ESQ.

Colonel Downie. Mr. Chairman, thank you very much for your kind invitation.

My statement, of course, is made at your invitation. In it I express my own opinions as an individual citizen.

I am no longer an active military officer; my statement has not been coordinated with, and does not represent the views of, the Department of Defense.

The purpose of S. 2318, as I understand it, is to amplify the Posse Comitatus Act of 1878. I believe there is a need to amplify that act. I leave comment on the details of S. 2318 to those more skilled at technicalities; I have no objection to this bill as it applies to the act. I believe the application of the bill is far more sweeping than intended. I do not claim to be a constitutional lawyer, but I am a citizen. The limitations on the bill which I suggest are, in my opinion, perfectly compatible with the objectives stated in the preamble to the Constitution.

The need to expand and clarify the Posse Comitatus Act of 1878 has been very recently demonstrated. The contemporary media headlines of 1967 to 1970 make evident the stimuli of the need among national leadership for information on impending and actual civil disturbances. Initially, it was expedient to use the Army to gather the information. Perhaps, in the long run, use of the Army spared the effort, time and cost of organizing, equipping and maintaining a civil element to perform the task. Patriotic, well-intentioned men of character did not weigh either the propriety or the principle involved in using the Army for this purpose. The current political and military leadership of the Armed Forces do not need the guidance of S. 2318. There will be new leaders in the future, however, who will face changing social and political situations. The Posse Comitatus Act was not forgotten in the late 1960's; it was not believed to apply. The lessons of the past should not be forgotten. The future deserves additional guidance in law.

I have said I have no objection to the provisions of the proposed bill as it amplifies the Posse Comitatus Act but that I believe the application of the bill is far more sweeping than may have been intended. In my opinion, the bill should recognize certain functions necessary to the successful accomplishment of the mission of the Armed Forces. These functions should be not only recognized but exempted from the application of the bill. These relate to the collection, storage and use of information necessary to:

The successful conduct of military operations in foreign sovereignties;

The detection and neutralization of foreign espionage directed against the Armed Forces;

The maintenance of the morale, discipline and loyalty of members of the Armed Forces;

The rational, equitable and legal conduct of that part of the business of the United States which is entrusted to the Armed Forces.

In the past 30 years or so the Armed Forces have been committed to a number of overseas missions; in some cases they are still there. The circumstances which require commitment are not susceptible to long-range prediction and the decision for commitment is never within the authority of the Armed Forces. One has only to reflect on the problems of World War II and the absolute necessity of distinguishing between collaborationist and pro-ally, not to mention the distinctions between Gestapo, Abwehr, the Allgemeine SS, the NSKK, the HJ, the RAD and so on. To a greater or lesser extent, similar problems were present in Korea, the Dominican Republic, Lebanon and Vietnam. Commanders must be capable of identifying friendly and hostile orientations among the local populace and within the local government. It is conceivable that the security of the command and the success of the mission may be dependent upon such judgments. This information must be collected, analyzed and prepared for use within the United States in advance of contingencies. Once the overseas expedition is landed at its destination, the collections of all Government agencies are assembled in the United States in order to provide support to the overseas element. Because the bill does not exempt this form of foreign intelligence, it prohibits its practice among the Armed Forces, in the United States and overseas.

The detection and neutralization of foreign espionage directed against the Armed Forces involves both operational investigation and education in the United States and overseas. For both investigation and education, information on espionage organizations and personalities is important. Unfortunately, the occasion has arisen in which this information must be collected and stored for court-martial purposes. The bill, as now written, denies this capability to the Armed Forces.

The Armed Forces must be reliable, disciplined and loyal. There is no democracy at the tip of a bayonet. The individual citizen-soldier is entitled to his political beliefs, but the Armed Forces, as an entity, must be politically neutral. Desertion counselling, incitement to refuse duty, inducement to mutiny have, in the recent past, come from without the Armed Forces both in the United States and overseas. Had these efforts succeeded in creating an unruly, mutinous and disloyal military, the results would have been catastrophic to our national interests and, quite possibly, to our constitutional form of government. Intelligent defense against such efforts within the Armed Forces does require information on the individuals and organizations involved. The bill does not permit the acquisition of this information.

Finally, there are a multiplicity of occasions in which intelligent response is required of Defense agencies to actions originating outside the military. These range from the bidder for the purchase of surplus military equipment to the requester for the provision of a guest speaker.

Unless some information is available upon which to base a reasoned response, the public business will be reduced to absurdity.

In none of the four areas which I have discussed do I propose extending the investigative jurisdiction of the Armed Forces. I argue the need to receive appropriate information from the civil agencies properly charged with investigative jurisdiction and the need to retain appropriate information.

In summary, I support the purpose of S. 2318. I believe its provisions in amplification of the Posse Comitatus Act are practical. I believe there is a requirement to limit the application of the bill, however, or, to put the matter more positively, to describe the permissible activities of the Armed Forces.

That concludes my formal statement, Mr. Chairman.

I would like to add one item, if I may.

Very recently I received a copy of an Army estimate, an unclassified civil disturbance threat estimate for the 5-year period 1971 to 1975. The author of this estimate, incidentally, is Mr. Bill Bowe, if there are any questions to be put to the author of the estimate, there he is.

My first point is that the Army staff insisted on the specific authorization of the Under Secretary of the Army before this 5-year estimate was undertaken in 1970.

But second of all, this estimate is based on unclassified publicly available information. There is no covert system at all. I think when your staff reviews it they will find it isn't a bad estimate for a 5-year estimate. I would like to offer it to the committee, and I will be glad to receive any questions.

Senator ERVIN. Yes, sir. The committee will be glad to receive it and note it an exhibit.

[The exhibit referred to follows:]

THE CIVIL DISTURBANCE THREAT 1971–75

I. SCOPE

A. This study deals with the nature, extent, and form of the domestic civil disturbance threat as it is expected to exist over the period 1971–1975. Following a background section, the study will break down the range of possible disorders into seven broad categories of disruption. While there is some degree of overlap, these seven fundamental categories of disturbances are sufficiently distinct to provide a useful framework for analysis of the total civil disturbance threat. The different types of disturbances to be taken up in order include: (1) racial disturbances; (2) student disturbances; (3) mass demonstrations; (4) political terrorism and guerrilla warfare activity; (5) labor disturbances; (6) newly developing sources of civil disturbances; and (7) natural disasters and other emergencies.

B. Each of the seven categories noted above will be separately discussed with specific reference to the present situation, the likely size, tactics and composition of the groups which might be engaging in various disorders, the manner in which such disorders may be affected by leadership elements, and the impact of such disturbances on civil police, National Guard and active Federal military forces. The seven sections of the study will conclude with forecasts of the civil disturbance threats as they are expected to exist over the period, ending April 1972, and over the five year period ending in 1975. These forecasts are consolidated for easy reference in a separate section at the end of the study.

II. BACKGROUND

Before beginning the discussion of the probable sources of disorder in the years immediately ahead, it is useful to look back at the historical emergence of civil disturbances as a law enforcement problem, with emphasis on the post World War II period.

A. Employment of Active Federal Forces

1. The commitment of active Federal forces in the control of domestic disturbances has been relatively rare in the 20th Century. Race riots have involved the Army on several occasions, in Washington, D.C. and Omaha in 1919; in Detroit in 1943 and 1967: and in Washington, D.C., Baltimore, and Chicago in 1968. State-Federal conflicts over the enforcement of Federal antidiscrimination laws also brought alive Federal forces to Little Rock in 1957 and Oxford, Mississippi, in 1962. With the exception of the Bonus Army's removal from Anacostia Flats in Washington, D.C. in 1932, labor disputes have been the only other source of conflict to involve the Army. In 1907, a Nevada mining disturbance resulted in the commitment of Federal troops. In 1914 and 1921, in Colorado and West Virginia, respectively, coal mining disputes required Army intervention. In 1919, the Secretary of War instructed commanders to respond to state requests for assistance on the theory that states were without protection from internal disorders due to the service of the National Guard in World War I. The use of active Federal forces in the Gary steel strike and elsewhere in 1919 was without presidential proclamation or other formalities. In the spring of 1970, a strike by post office employees resulted in the use of Federal troops in New York City. This employment differed from previous Army commitments in labor unrest in that troops restored an essential service and were not employed to maintain law and order.

2. While domestic violence became widespread during the 1960's, it was for the most part of a predominantly low order of magnitude. Other than the employment of regular Army troops on five occasions related to racial disturbances in the 1960's, the only other events of major significance for the Army in the recent past occurred when sizeable numbers of troops were prepositioned in three cities in anticipation of possible disorders. These cities were: (1) Chicago, in connection with the Democratic National Convention in August, 1968; (2) Washington, D.C. in connection with the Presidential inauguration in January 1969, the Vietnam Mobilization demonstration in November 1969, and again during the protest demonstration against the commitment of troops to Cambodia in May 1970; and (3) New Haven, Connecticut, during protests against the trial of Black Panther leaders near Yale University in May 1970. In contrast to the spontaneous race riots of the 1960s, the prepositionings involved demonstrations organized for the purpose of achieving well-defined political goals. On each of these occasions, the overwhelming majority of demonstrators were peaceful in their protest, and the small minority which chose to provoke violence was at all times able to be brought under control by local or state police or National Guard forces.

3. Another problem has been the occasional threat to the security of Federal installations. A number of political demonstrations involving Federal installa-

tions did on occasion involve minor troop movements and confrontations with protestors, such as the Pentagon demonstration in October 1967, or the Fort Dix protest in October 1969. These incidents bear no relationship to the large scale racially oriented outbursts of violence which put the Army on the streets in 1967 and 1968 in Detroit, Baltimore, Washington, and Chicago. Providing for the security of military installations differs markedly from the control of massive civil disturbances in American cities.

4. Finally, active Federal forces were alerted for an unusual function beginning in the Fall of 1970, when the President, in response to the hijacking threat, ordered the temporary emplacement of Military Police on domestic and international air carriers. This use pointed up the increasing importance of air travel and the need to move quickly to secure the nation's air commerce from the rapidly developing piracy problem. Due to the preventive, deterrent character of this employment, active Federal forces were turned to only because of the immediate need for manpower and budget considerations. The use of military personnel as sky policemen is not related to usual benefits deriving from the use of Army personnel, namely the benefits inherent in the use of collective, organized, and overwhelming military force.

5. Unrest during the past decade gives insight into what may lay ahead in the 1970's. Three primary social currents were responsible for turning the decade of the 1960's into an era of turbulence. First, there were widespread social frictions and dislocations caused by the emergence from political apathy of the Negro minority and the resultant drive for equality within the American system. Second, there was mounting opposition to the war in Vietnam and increasing verbal attacks on the basic responsiveness of the institutions of government and the manner in which power in the society was distributed. Third, there was a nascent cultural revolution based in large part on the emergence of youth as a separate and distinct subclass of society with political and social values antithetical to older age groups. The spirit of protest, with increasing violence became the dominant theme of the 1960's.

6. The major conclusion to be drawn concerning the Army's role in civil disturbance in the 1960's is that the situations requiring limited commitments of forces to suppress disorders arose solely from racial frictions in the society. While student and anti-war associated violence had become relatively widespread by 1970, no precedents existed to firmly fix any need for Federal forces to be committed to the control of such disorders. The primary civil disturbance threat as the decade of the 1960's closed remained that of racially oriented disorders. Trends in evidence towards the end of the decade did indicate a possible widening of the sources of violent discontent likely to have a direct impact on the civil disturbance mission of the Army. To date, however, no other wellsprings of violence have forced commitment of regular Army troops to control a civil disorder, nor were they imminently likely to.

B. Employment of the National Guard in a Federalized Status

1. Since 1945, the National Guard has been employed in a Federalized status on only 12 occasions. The first occurrence was in 1957 when the Little Rock, Arkansas school integration crisis took place. In 1962, 1963, and 1965, the Mississippi and Alabama National Guards were Federalized six times, in connection with school integration disorders and racial disturbances in Birmingham. In 1967, the Michigan National Guard was Federalized during the Detroit race riot. In 1968, National Guard units were employed in a Federal status for the Washington, Baltimore, and Chicago racial disorders. Finally in the Spring of 1970, National Guard units were called to Federal duty for the postal strike.

2. As can be seen from the above review, there are two general situations in the post-war period which have resulted in the Federalized control of National Guard units for domestic purposes. First, units have been called to Federal duty when conflicts have arisen between the Federal government and state governments over the enforcement of Federal laws relating to racial discrimination. Second, when disorders or crises grow to proportions requiring intervention of active Federal forces, as was true for the Detroit, Baltimore, Washington, and Chicago racial disturbances, and in the case of the postal strike, local National Guard units usually will be placed under Federal authority. The first form of call-up reflects an inherent tension in the Federal system, with state governments ultimately responsible to national authority.

Force or the threat of force may be necessary whenever conflicts of this nature occur over matters of a deeply disputed nature. The second form of call-up relates to the need for unified command and control procedures when active Federal forces must be committed for domestic peace keeping operations or the restoration of essential services.

3. The relative rarity in the employment of National Guard units in a Federal status in the post-war period, only 12 occasions in a quarter century, is indicative of the extraordinary nature of Federal-state conflicts, accounting for seven of the call-ups, and the extraordinary and infrequent need for intervention of active Federal forces with the concomitant need for a unified Federal chain of command, accounting for the remaining five call-ups. Finally, it is important to take note of the obvious fact that racial divisions in the society have produced the need for fully 11 of the 12 calls to Federal status the National Guard has experienced in the entire post World War II period.

C. Employment of the National Guard in a State Status

1. In the post-war period there has been a markedly accelerating trend in the employment of the National Guard in a state status for the purpose of civil disturbance control. In the entire period between 1945 and 1959, the National Guard was used for such purposes only 55 times. There were 33 call-ups during the 1960–1964 period. Employment accelerated over the next five years with the National Guard employed 248 times. This included the Watts, California riot in 1965, which involved the largest single National Guard employment in riot control ever experienced. The first five months of 1970 saw the Guard employed 43 times in connection with civil disturbances.

2. The use of the Guard only 55 times in civil disturbance operations over the 1945–1959 period largely reflected the untroubled nature of the times. Although racial unrest had begun to emerge as an issue it was not until the 1960's that this aspect of American life grew to its present dimensions. The first student disorder traceable to those which predominate today occurred in 1964 at Berkeley and, by 1970, growing numbers of students had become involved in frequent large scale disturbances. Just over the 1–21 May 1970 period, Guard forces were employed in 43 cities and 23 states in connection with the student disorders following the Cambodian incursion and the incident at Kent State University. In addition to student and other disturbances the Guard has, of course, also been employed in times of natural disasters or other emergencies.

3. The National Guard has traditionally borne the brunt of effort and responsibility for large scale civil disturbance operations in the country, particularly over the last decade. Whereas active Federal forces were committed for the control of only six civil disturbances between 1945–1970 the National Guard was employed 336 times. The tradition of local responsibility for law enforcement has remained strong and the commitment of Federal forces has been extremely rare.

D. Employment of Civil Police

1. The prime responsibilities for smaller civil disturbances have rested, as they always have, with local and state police forces. The increasing urbanization of the society, the increase in the numbers of young people in the cities, and the concentration of low income minority groups in urban areas, have all contributed to the rise in crime seen in the post-war period. Not only have police forces had to expand to cope with their primary mission of containing and preventing criminal acts, but also, beginning in the 1960's, they have had to adapt increasingly in order to perform the secondary and more specialized mission of civil disturbance control. This secondary mission is of critical importance, since the expertise with which it is performed by local police departments often will determine whether a confrontation grows into a problem for National Guard or active Federal forces.

2. Police forces exhibit a great variance in the skill and competence with which they deal with civil disturbance problems. This is due in part to the decentralized nature of law enforcement in this country. It also reflects the diversity of experience among various police forces. Many large city departments have developed considerable expertise, while smaller cities often have a more varied exposure to such problems and have had difficulties in acquiring adequate resources to do the job. The needs of the nation's police depart-

ments began to receive Federal attention for the first time in the late 1960's, with the establishment of the Omnibus Crime Control Act of 1968. Under this law, the Law Enforcement Assistance Administration (LEAA), under the Department of Justice, has funneled Federal funds through the states to many local police forces. Similarly, more funds have become available at the local level with the increasing public concern over law enforcement.

3. Generally speaking, through adaptations in equipment, training and tactical experience, those police departments in this country which have had substantial civil disturbance responsibilities have grown more proficient since these problems began to develop in the early 1960's. This upgrading process should continue as long as public concern over crime remains high and social problems in the society remain reflected in civil disturbance incidents. Civil police departments, up to the present time, have been able to contain most disorders. Reliance on the National Guard has usually been both the result of small departments being unable to contain even moderately sized disorders, as well as, the result of having disorders grow to sizes which have exhausted the resources of more sizeable police forces. There has been a continuing increase in mutual aid agreements among nearby police forces. This has obviated the need for National Guard employment in some instances. The number of these agreements should increase as the need for such pacts becomes apparent in differing locales. Despite these pacts, employment of the National Guard in prolonged disorders may be turned to as a cost saving mechanism, since police overtime can be a significant budgetary burden on local government.

E. Civil Disturbance Preparedness

1. As noted above, the differing levels of violence which may be associated with civil disturbances may result in an impact on local or state police, the National Guard, or active Federal forces. In addition to the greatly varying levels of a civil disturbance, there are also substantial differences in the forms of violence which may occur. Thus, police may one day deal with a clash between students at a high school football game and the next day be facing sniper fire in attempting to gain entrance to a heavily defended apartment. National Guard forces may be used to assist in traffic control so that police may be freed for coverage of a potentially disruptive demonstration or they may find themselves dealing with a full fledged riot. Similarly, the recent past has seen active Federal forces suppressing riots as well as sorting mail in the restoration of an essential service.

2. This diversity of need, at each level of government, means that all of the different security forces must be structured, equipped, trained, and prepared for a multiplicity of missions within the broad spectrum of civil disturbance operations. Due to the high visibility of such operations, intense public scrutiny follows the execution of civil disturbance control plans and procedures. Public confidence in the agencies responsible for civil disturbance control is essential, both because of the democratic nature of our society and because of the danger that increased tensions following controversial incidents may further inflame already difficult situations. Consequently all levels of government are and will continue to be under great pressure to anticipate civil disturbance problems and insure that their security forces are as well prepared as possible to discharge their sensitive responsibilities.

F. Factors Involved in Civil Disturbances

1. The civil disturbance phenomenon cannot be predicted with assurance. Just as no one could have foreseen in 1965 the five years of student turmoil which lay ahead, so no one can predict now what the next five years may hold in the way of further disorders. A careful assessment of the present situation, and reasonable extrapolation therefrom, can give some idea, however, of the likely parameters of disorder ahead, particularly over the short run period of one year. Nevertheless, over the five year period, the possible impact of volatile political, economic, demographic, and cultural factors may upset current expectations considerably. Psychological attitudes are particularly likely to vary widely and unpredictably.

2. In addition to these variables, unexpected, highly disruptive incidents may set off a chain of events ordinarily deemed inconceivable. Thus, a scenario could be imagined in which a temporary breakdown in local law enforcement

could result in an enormously increased and unanticipated role for National Guard or active Federal forces. A police strike or slowdown in a city, growing out of dissatisfaction with pay or the hazardous nature of the work, would be one such instance. Another might be the rapid growth of vigilante movements in response to either a sharply escalated criminal atmosphere or a substantial wave of political terrorism. The development of physically and psychologically "liberated" enclaves could also lead to drastically different civil disturbance situations.

3. One of the major factors which will affect the civil disturbance picture in the years ahead will be in continuing development of a counterculture among the young. Many young people, joined by an increasing number of older people, will be adopting life-styles and values sharply different from those which have predominated in our society in the past. Strong pressures for political and social change have already grown out of this developing counterculture. Some leadership, financially self-supporting and receiving much media coverage, has attempted to take advantage of growing alienation and has tried to profit from the unrest which inevitably accompanies broad and fundamental changes. Similarly, in the area of race relations, the most strident voices on both sides have received the greatest amount of attention. However, other more responsible leadership, working within the system, has been present as well. These elements have not invited violence and have exerted a stabilizing influence in this regard. While these latter voices may be overshadowed in the media, they constitute an important mitigating factor. Civil disturbances broadly related to these cultural changes will be a part of the future, but they will not be the greatest part or even, in the final analysis, an important part.

4. The United States is not a Banana Republic. The traditions and shared values which hold the country together as a society are strong. Our political and social institutions have proved responsive and stable over two centuries. They are not going to crumble in the five years covered in this estimate. While the stresses ahead may be unprecedented, they will not be apocalyptic. The civil disturbance threat estimate which follows should be read with this borne in mind.

III. THE CIVIL DISTURBANCE THREAT 1971–1975

A. Racial Disturbances

1. Present Situation

a. Substantial black disorders in the nation's cities began to occur with increasing frequency in the early 1960s. Little Rock and Oxford, Mississippi, on the other hand, had their roots in white-initiated violence. Relatively minor incidents in the 1960s often touched off extensive destruction in predominantly black neighborhoods. Looting, arson, vandalism, and occasional sniping were the normal patterns of violence. By the middle of the 1960s, racial disorders had become a regular summer feature of American life and they had also escalated in size and violence. The riot in the Watts area of Los Angeles in 1965 was a landmark of this period. The peak of such disorders came in the latter part of the 1960s in Detroit in July 1967 and in 144 other American cities in April 1968 in the aftermath of the assassination of Dr. Martin Luther King, Jr. Active Federal forces were never committed during this period to a city of under 800,000 population and were committed a total of only five times. From April 1968 until the present, extremely large scale racial violence has been on the decline. Federal troops have not been used for controlling racial violence since April 1968. While the very large scale riots in the black neighborhoods of the nation's big cities now appears to have receded, smaller disorders of a racial character, among white as well as blacks, continue to occur. There has emerged a substantial and continuing level of racially oriented violence of varying orders of magnitude in many cities, both large and small. Frictions arising from the desegregation of various school systems has produced much of this violence in the last few years. Such violence has not grown beyond local and state control, however, and it has remained largely a police and National Guard problem.

b. While there has been a diminution in the levels of violence associated with racial disturbances in the recent past, the year 1969 saw sharply increased levels of racial tension in the society. Localized disorders with markedly different threats to police began to develop. Over the entire period 1960–1969, 561 law enforcement officers were killed. In 1969, a total of 86 law enforcement officers were murdered. This was a 34 percent increase over 1968. Many of these incidents have racial overtones. FBI compilations through the second week of September 1970 showed that 19 law enforcement officers had been killed and 152 wounded during 1970 in 162 attacks having racial overtones. These developing threats have received substantial attention from the media, although to date they have not impacted to any degree on National Guard or active Federal forces. Urban police forces, however, have had to carry out their missions in an increasingly charged atmosphere, with violence specifically directed at them by individuals and small groups often espousing racial hatred and revolutionary ideals.

2. *Nature, Extent, and Forms of Racial Disturbances*

a. *Nature.*—(1) As noted above, racial disturbances vary greatly, both as to the numbers of individuals participating, and the extent of damage which may be caused. The most severe racial disturbance which has occurred to date took place from 23 July to 2 August 1967 in Detroit. When the riots ended there were 43 dead, hundreds injured, and more than 7,200 persons arrested. Damages approached $40 million. Detroit also marked the first time since 1943 that a President had committed active Federal forces to control a disorder which had grown beyond the capabilities of local and state security forces to contain. At the lower end of the scale of disorders are the small street altercations which often occur in connection with police arrests or other activities in black neighborhoods. These are usually contained with a minimal reaction necessary on the part of police. This order of magnitude is by far the most prevalent level associated with racial disturbances, although sudden escalation to higher orders of magnitude is often possible.

(2) There has never been evidence of central control or direction of large scale racial disorders. Such events have been spontaneous. It is usual to find the leadership of local groups on the streets in such situations. Those leaders with any institutional base, however, are generally concerned with preventing the destruction of the community. This is not to say that there are not those who urge on violence during a riotous episode. These elements tend to be *ad hoc* leaders, creatures of the moment. They briefly articulate deeply felt hates and lead small groups in the destruction of specific targets of their animosities, as when for instance white commercial interests in a neighborhood may be singled out as external exploiters of the local residents. Beyond the immediate context of a riot, there is another dimension in the impact which certain leaders and extremely militant groups may have. For example, if the leaders of a militant revolutionary group disseminate propaganda over a long period attempting to justify and provoke the murder of "fascist pigs," which is to say policemen, then at some point there will begin to be evidence that there are those who take the propaganda seriously. While very few may be swayed by such appeals, in relation of the total number of people exposed to such propaganda, enough have responded to create a climate of violence and to pose a serious and relatively new threat to police officers. This has increased the tensions of police work and these tensions in turn are often fed back into a community as mutual fear and distrust increase. Militant calls for violence have tended to set the outside parameters of what can be expected.

b. *Extent.*—While the racial disorders began in the South in the 1960s, they quickly spread north and west. Today, racial tensions are such that where there is a sizeable Negro community in a town or city there is likely to be a potential for disputes of a racial nature. For instance, cities such as Cairo, Illinois, population 9,348, with a police force of 14, has had a degree of racial violence equal to that in many of the nation's larger cities. Racial disturbances occur nationwide, in communities of all sizes.

c. *Forms.*—(1) There exists a wide variety of racial disturbances. Disorders range from well thought out sniper attacks on symbols of established authority such as the police, to the disorganized mob violence seen in the larger disorders. There is a clear break between premeditated and spontaneous incidents. In the former category can be lumped much youth gang and revolutionary activity. Police clashes with such groups are on the increase, although the more frequent disturbance is still the spontaneous one which breaks out without warning and involves participants who have had no prior relationship with one another. The mutual suspicion between police and neighborhood residents feeds the discontent which already exists and leads to abuses on both sides.

(2) Police often have disturbances accompanying arrest situations in minority neighborhoods. As a crowd of curious forms, epithets may begin to be hurled, attempts to free the suspect may occur, bricks, bottles and other missiles may be thrown, and attempts to seize law enforcement officers or destroy their vehicles may follow. As a disorder grows progressively more violent, increasing crowds are brought out into the streets. Police reinforcements attract further attention. The locus of the disturbance may then begin to move away from the scene of the original altercation. As this occurs, the crowds become more amorphous and distended. Strip commercial areas are often the primary target of roving bands of rioters. As a disturbance escalates to this level, there continues to be no centralized control or direction of the ensuing violence. Small bands of roving rioters are responsible for much of the subsequent window breaking, looting, arson, and molotov cocktail throwing. Reports of sniping will often begin to come in, although many of these will remain unconfirmed. Usually, rumors will exaggerate the areas and extent of damage. Should the National Guard have to be called to state active duty, it will be indicative of fears on the part of police and local officials that the disturbance will be sustained over a substantial period of time. The need to relieve overworked police will often be a factor as well. The appearance of uniformed military personnel on the streets, whether National Guard or active Federal forces, and high visibility patrolling, which usually follows, will begin to alter the nature of the disorder. Sniping and missile throwing as well as taunting and refusal to follow directions may continue for a substantial period of time, however. While large crowd concentrations will begin to be broken down, significant damage may continue to be perpretrated by small groups or individuals.

(3) It is exceptional for the violence to extend outside black neighborhoods, although there may be sporadic and isolated incidents of assault, breaking of windows, or attempted arson in downtown commercial or white residential areas. Protection may have to be provided for whites who enter the disturbance area, either intentionally or inadvertently, by car or by foot. Incidents may also occur as both black and white businessmen attempt to protect their investments. Very often groups of concerned citizens will be organized to attempt to calm tensions and disperse crowds. Significant counterviolence on the part of whites, in the form of assaults, sniping, or firebombing, has been known to occur, although this is not the usual pattern. Centers of particular violence have often been public housing projects, from which sniper fire has been directed and where, in any event, there are large concentrations of residents who may attract police or National Guard attention.

(4) Sabotage of police or military vehicles and equipment may be attempted. The extremely low percentage of Negroes in the National Guard often has added to animosities, since this often equals and, in some instances far exceeds, the segregation evident in the indigenous police force on the scene. This problem does not carry over significantly when the use of Federal forces becomes necessary, due to more equal representation of the races visibly evident there. There is a cooling effect when Federal military personnel are involved, growing out of the realization on the part of many residents that the young soldier is merely doing a job that he probably considers distasteful and he may have easily come from a neighborhood similar to the one he now finds himself in. The use of Federal military forces does not evoke quite the same image of an alien occupation force that a largely white police force or National Guard may.

(5) Most injuries, arrests, and damage in racial disturbances occur during the evening hours. The largest single cause of arrest is usually curfew violations. The arrest of arsonists or snipers is the exception to the rule. Large disorders are a cathartic experience for a community and are unlikely to occur twice in the same area in a given year. Substantial racial disorders have been and remain largely spring and summer phenomena, although minor disorders involving police occur throughout the year.

3. Threat Forecast

a. *One year projection.*—The threat of racial disturbances is expected to continue at roughly current levels through the period ending in April 1972. The likelihood of active Federal forces having to be employed for the containment of such disorders should remain small. National Guard elements can be expected to be employed for such disturbances, particularly over the Spring and Summer of 1971. Local and state police forces will continue to bear the brunt of responsibility for controlling racial disturbances. Although there will be a wide variance in the problems experienced by different police forces in this regard, it is quite possible that the increase in racial tensions noted in 1970 will continue to rise over the period ending in April 1972. Should this prove to be the case, urban police departments can be expected to be forced to deal with a higher level of incidents and disturbances having racial overtones. Some of these problems will be directly associated with militant groups, a number of which have already exhibited a penchant for becoming involved in shootouts with police. The increasing resort to counterforce against police, including bombing and sniping, could also be expected to carry over to situations in which the National Guard or active Federal forces were employed. Controversies and racial frictions in many secondary school systems will be a pervasive problem throughout this period, although it should remain a matter for police authorities.

b. *Five year projection.*—The five year period ending in 1975 should see some amelioration in racial cleavages in the society. Increasing access to all levels of the job market, the resultant growth of the black middle class, and the increasing diversion of resources to the nation's cities, all should contribute to this mitigation of racial tensions. Racial problems will not be resolved during this period, however. Many cities will be entering transitional situations with respect to the shifting of political power. Such shifts will be reflecting earlier migratory patterns. Racial disturbances may decline somewhat in size and frequency, but they are unlikely to disappear. Local circumstances will determine when and where such disturbances occur. The likelihood of active Federal force involvement in the control of such situations is not expected to increase beyond the current low levels. Disorders will probably continue to involve National Guard forces from time to time, although the latter part of the five year period may see a decline in the frequency of such employments compared to the late 1960s. Local police forces will probably be expanding over the five year period, in response to public concern over crime. This expansion, while largely unrelated to the separate problem of civil disturbance control, will nonetheless give such police forces a greater capability to deal with such situations. The earlier part of the five year period may see police dealing with a continuing rise in incidents and disorders with racial overtones. This rise will largely remain within the realm of police control. Police forces in the latter part of the five year period may begin to see a decline in some of this activity. Negro "law and order" constituencies in many cities may begin to develop and press for the control of both individual and collective violence.

B. Student Disturbances

1. Present Situation

a. The current wave of student disorders began at the University of California at Berkeley in the Fall of 1964. While it at first appeared that this kind of disruption grew out of frustrations with the increasing depersonalization of students in California's unique "multiversities," it was not long before smaller, private universities also began to experience disruptions, such as that at the University of Chicago in 1966. Student protests and sit-ins became more widespread in 1967 and national attention was focused on Columbia University in the spring of 1968, when protests organized by the Students for a Democratic Society (SDS) succeeded in bringing the normal operations of that school to a complete halt. This feat was duplicated by SDS a year later at Harvard University, with national attention again directed at the disturbances in higher education. Prior to the spring of 1970, it was still relatively rare for student disturbances to require National Guard forces for their control. When the National Guard was called out, it was usually at predominantly black southern colleges or at universities such as Wisconsin or Berkeley, where radicals on and off the campus were relatively numerous and a tradition of campus militance had been established.

b. The Spring of 1970 saw a sharp escalation in both the extent and severity of campus disorders, although radical students continued to constitute only a small minority. The decision to commit troops to Cambodia at the end of

April, coupled with the killing of four students by Ohio National Guardsmen at Kent State University on 4 May, produced a wave of disruption and violence at colleges and universities across the country. Over 400 campuses went "on strike" for varying lengths of time. Arson and vandalism directed at ROTC and other facilities were commonplace. While the National Guard was called out to restore order on many campuses previously untouched by significant disruptions, there was no need for Federal forces to assist in this control function.

c. Active Federal forces have never been used in dealing with campus disorders. However, such forces were prepositioned in May 1970 as a precaution against disruption at Yale University in New Haven, Connecticut, in connection with protests against the trial of black revolutionaries there.

2. Nature, Extent and Forms of Student Disturbances

a. *Nature.*—(1) Student disturbances have been a growing phenomenon over the last six years. They have not only grown in numbers, but there has also been an increase in the range of violence experienced. The prime articulated issues have been the war in Vietnam, the racist nature of the university and other institutions of the society, and the need for reform of the university community and a redefinition of its goals. The prominence of these issues has tended to obscure certain underlying shifts in values that have had much to do with the increasing alienation of many students. The new malaise reflected in the attitudes of many college students, now seen in substantial magnitude at the high school level as well, is part of a developing counter-culture. This counter-culture finds vacuous and repudiates many of the aspects of life heretofore taken for granted in technologically advanced, consumer oriented, post-industrial states. The disinclination to become a part of the highly organized, hierarchial bureaucracies that increasingly influence and dominated the citizens of such states has certainly been one underlying cause of student disorders. Many students are wondering what brought them to pursue an education seemingly designed only to turn out efficient technocrats able to manage the new industrial state. Much of the violence which has occurred in connection with student disturbances can be attributed in part to frustration with "the system."

(2) Student leadership has had much to do with the course of this growing disaffection. At one extreme have been radicals who have chosen Che, Mao and Kim IL Sung as appropriate symbols to celebrate the use of force to achieve revolutionary goals. Arson and bombing directed at targets associated with the war of racism have been a product of this end of the student political spectrum. There is no evidence of any coordinated national conspiracy responsible for the numerous disorders seen in the last few years. Rather, there is the natural impact of new ideas, able to be spread with unprecedent rapidity due to the speed of modern travel and communications. Conferences may be held from time to time to lay out strategy and choose issues to concentrate on, but each campus has ultimately been left to do pretty much its own thing. Sometimes issues fail one place and do well in another. Sometimes, as in May 1970, there is such a confluence of outrage that the entire system of higher education, and, indeed, the entire society, have felt the shock waves. The killings at Kent State and the death of a student in a bombing at the University of Wisconsin in the Summer of 1970 may have brought about the end of innocence as far as the campus disorders go. Moderate student leadership, no longer afraid to note the costs of violence, has begun to be heard more frequently. President Nixon's letter to college and university presidents in the fall of 1970, along with the promulgation of the Scranton Commission Report on Campus Unrest have both attempted to grapple with the problem of student disorders. In addition, the entire matter has also become a political issue in many places. The quality of leadership, whether exercised by campus radicals or by established authorities, will determine to a great extent the course of campus unrest in the future. Continuing student deaths may serve to isolate radical elements, to the extent they are associated with the bringing about of such tragedies. The demise of the strongest national student radical group at the end of the 1960s can be directly attributed to their involvement in escalating acts of violence. This alienated much of their existing and potential following. The lack of a mass base supporting such violence, however, will not prevent determined individuals or small groups from continuing to disrupt campus communities. The student arsonist or bomber will continue to pose a problem, in the same manner such individuals may pose a threat to the outside community.

b. *Extent.*—In 1970, there were 7,377,000 students pursuing degrees in 2552 American colleges and universities. Campus disorders have occurred in many of these schools and no area of the country is immune from these disruptions. The Carnegie Commission on Higher Education, in a fall 1970 survey of 2551 college and university presidents, found that colleges and universities in the Northeast reacted to the events of May 1970 more than elsewhere in the country. The survey also found that colleges and universities which admitted freshmen from the top ten percent of high school classes had more reactions than schools with open admissions policies. Thirty-five percent of the more selective schools had strikes lasting one day or more. Five percent of these schools had violent demonstrations. Only nine percent of the schools with more open admission policies had strikes and only five percent had violent demonstrations. To the extent that the reactions to Cambodia and Kent State reflected continuing nationwide attitudes and possible reactions, these figures may provide an insight into the extent of such disorders in the future.

c. *Forms.*—(1) Student disturbances run the gamut from peaceful demonstrations and rallies on campus, to violent mob actions which spill from the campus into adjacent communities. The disorders in May 1970 involved all forms of campus disturbance, from peaceful protest to sabotage.

(2) Although the numbers of students participating in demonstrations of one sort or another is often very substantial, the number who have engaged in violence remains small. The situation facing the Ohio National Guard at Kent State is instructive as to this point. On the Friday following the President's speech on Cambodia, a number of students from the campus of 20,000, vandalized property in the downtown area of nearby Kent, Ohio. The town had a population of only 30,000 and it was felt that the small police force was overtaxed. The Ohio National Guard, already activated for a nearby teamster strike, prepared to enter the situation. On Saturday evening the ROTC building on campus and its contents were destroyed in a fire set by a crowd that included many who were not Kent students. Damage was assessed at $86,000. Railroad flares had been used to start the fire and machetes and ice picks were used to gouge and cut fire hoses. The skirmish line of Guardsmen was peppered by missiles thrown by students. Missiles included: tree limbs, heavy boards and an estimated 340 rocks weighing up to seven and a half pounds. According to the Scranton Commission report, there was no evidence that the disorders were planned by student radicals or that there was sniper fire directed at the National Guard. The crowd of students into which the Guard fired on Monday was estimated at 2,000 or only 10% of the campus population. Within this number were many who had assembled either unaware of a ban on mass demonstrations or indifferent to it. Some were on their way to classes and others merely bystanders or curious onlookers. The number of those actually engaged in provoking violence was therefore a further faction of the crowd of 2,000.

(3) The disturbance at Kent State was not entirely typical of serious disorders, however. First, people were killed. Second, the adjacent community suffered extensive vandalism. Third, there was more property damage on the campus than is usually the case in student disturbances. Most campus demonstrations do not require intervention by National Guard forces nor do they always involve even local police intervention.

(4) The temporary seizure of buildings has been a common tactic used in the past to gain attention and support for various "non-negotiable" demands. Individual acts of violence on campus such as window breaking, defacement, arson or bombing are difficult to prevent and are often dealt with after the fact by the school security forces or adjacent police forces.

(5) Where a large campus is located in or near a small city and crowd violence spills off the campus, as has happened at Berkeley with the People's Park dispute, in Santa Barbara with the burning of the Isle Vista branch of the Bank of America, or as in Kent State, National Guard forces are more likely to be called in to support the local police forces.

(6) Once a significant disturbance is under way, patterns of violence have certain similarities. Security forces, whether police or National Guard, are likely to be the object of much verbal abuse and will have acts of violence directed specifically at them. Whereas earlier there might have been present only intangible issues or targets of animosity such as an ROTC building, the arrival of security forces puts living players into the game. Many crowds are saved from incipient boredom in this fashion. New issues related to the pres-

ence of police or Guardsmen are developed. Many students raise the issue of police brutality. They believe society is bankrupt because of what they consider its reliance on brute force. Roving groups may attempt to damage equipment or otherwise interfere with security forces. Traffic in the area on and off the campus may be disrupted, as students attempt to take their message to the passive citizens of the world outside the campus.

(7) The more serious or romantic rioters may affect costume appropriate to street battle, including: gas masks, to protect against tear gas or produce a fearsome visage; clubs, with which to break windows or vanquish foes; and molotov cocktails, to burn symbols of the establishment or perhaps shed a little light on things, as the case may be.

(8) Increasingly, so-called "street people" have become involved with the demonstrations at the larger colleges and universities. These are often people not affiliated with the school, except by reason of their living in the immediate environs of the campus. These elements tend to be younger than the student demonstrators and are often more irresponsible with respect to the violence which they are willing to commit.

3. *Threat Forecast*

a. *One year projection.*—Student disturbances are expected to continue through the period ending in April 1972. The pace of withdrawal from Vietnam, and the continuance of the war, will still be issues, though this may diminish towards the end of this period as American disengagement proceeds in accordance with the President's decisions. The social inequities and cultural patterns of American life will continue to be a source of frustration to college and university populations which are acutely sensitive to the gap between what ideals the society professes and what the society in fact practices. Issues of environmental quality and technological impact will also develop over this period and may give vent to some disturbances. The security problems associated with student disturbances will usually be within the province of school security forces and local police departments. However, the National Guard will probably be committed occasionally over this period to deal with the larger disorders. An escalation in tactics, to include use of firearms, cannot be ruled out. It is unlikely that there will be a wave of massive, simultaneous disturbances, such was seen in May 1970, although there remains the possibility that some incident of national proportions could again spark this kind of widespread disruption. It is possible that legislative support for higher education may be affected. This could touch off disturbances in the short range period. In the long run, this might dampen such activity. The likelihood of having to employ active Federal forces should remain extremely remote. The limited size of campus populations alone should insure this. Active Federal forces would have to be employed only in the unlikely event sizeable multiple campus disorders occurred in a state where the National Guard was already employed in other capacities. This situation has never occurred and, due to the size of most National Guards, it is extremely doubtful that such a situation will develop.

b. *Five year projection.*—The control problems associated with the campus disorders experienced to date have not grown beyond local and state capabilities due to the fact that the students were pursuing their studies in 1970 in more than 2552 separate institutions. While some of the largest state universities exceeded 30,000 students, institutions of this size were the exception rather than the rule. The rise in the student population over the period 1971–1975 will increase both the number of schools and size of some educational institutions. There will not come into existence student metropolises of a radically different type, say on the order of 75,000 or 100,000. Over the five year period, there is likely to remain a problem of student disturbances, although the size and frequency may be somewhat diminished from the levels seen in the late 1960s and early 1970s. The war in Vietnam will have receded as an issue, but some of the other concerns which have been involved in campus disorders will not have been eliminated and, in fact, may be somewhat broadened. The developing campus concerns with issues of ecology and technological impact will not find the same convenient targets offered by classified military research or the presence of ROTC. Curriculum reform and university governance along with pressures for a less competitive academic environment should come more to the fore in this period. General antagonisms of young people towards what is regarded as a crassly materialistic society will probably grow over this period.

These attitudes will be strongest in the institutions of higher education. In short, it is likely that there will continue to be sharp social, cultural and political differences between the college and university populations and the society at large. This will not necessarily result in regular employment of the National Guard, however. Campus police forces will be strengthened during the next five years, as will the capacities of many of the adjacent local police forces. This may help lessen somewhat the frequency of National Guard employment.

C. Mass Demonstrations

1. Present Situation

(a) One of the most notable developments of the 1960s was the growing ability of political organizers and promoters to assemble extraordinarily large crowds at a particular place at a particular time for a common purpose. Generally agreed upon estimates give some insight into the proportions of the phenomenon. In 1963, over 250,000 came to the Lincoln Memorial grounds in Washington to hear Martin Luther King's "I have a dream" speech, in retrospect a high point of the early civil rights struggle. In New York City in the spring of 1967, 200,000 demonstrators gathered to protest the war. Perhaps 70,000 demonstrated at the Pentagon in October 1967. The Democratic National Convention attracted 10,000 protestors to Chicago in August 1968. The year 1969 saw 400,000 members of the "Woodstock Nation" assemble at Bethel, New York, for a rock concert and "festival of life." In October and November of 1969, the largest anti-war demonstrations yet to occur took place in cities across the nation. A quarter of a million protestors came to Washington, D.C. Numerous mass gatherings of lesser size had become widespread and frequent in the nation's cities by the end of the decade.

(b) The security problems associated with such large demonstrations and gatherings are quite different from the problems associated with the racial disorders which involved the Army in direct fashion five times in the 1960s. With rock festivals, such as Woodstock, the primary security problem is that faced by promoters wishing, but unable, to exclude non-paying attendees. Public concerns lay largely in the areas of drug use, proper land use regulation, traffic congestion, and public health. These worries are primarily of a local police nature, though the National Guard has on occasion become involved. Collective violence has usually not grown out of such gatherings, which are motivated more by cultural tribalism than political disaffection. Mass demonstrations organized around political objectives have posed a more direct, though still quite limited, threat of civil disorder. The early mass demonstrations associated with the civil rights movement were explicitly non-violent, both in theory and in fact. By contrast, the later large scale anti-war demonstrations came to be marred by peripheral violence. This problem largely derived from a small minority of individuals who used the large demonstrations to engage in acts of civil disobedience or vandalism and other street violence. The overwhelming majority of political protestors have remained peaceful in their expressions of dissent at such gatherings, although the number of violent demonstrations has been growing. The Pentagon demonstration in 1967 saw confrontations with demonstrators and a substantial number of arrests for acts of civil disobedience. The Democratic National Convention in Chicago in 1968 was the scene of more substantial confrontations with police and National Guardsmen. The so-called "Counter-Inaugural" demonstration in Washington in January 1969, witnessed a repeat of police confrontations involving small bands of roving demonstrators. The militant Weatherman faction of SDS collected 300–400 street fighters for their "Days of Rage" and "Wargasm" action in Chicago in October 1969. The Vietnam Moratorium on 15 October 1969 was noted for its peaceful demonstrations nationwide, but the 15 November 1969 Mobilization gathering in Washington saw a return of vandalism, street violence, and police and National Guard confrontations. New Haven, Connecticut, experienced minor confrontations in connection with the protests against the trial of black revolutionaries there in May 1970. Similar police problems arose in May 1970, at the conclusion of a demonstration in Washington, which attracted 60,000 persons protesting the commitment of troops to Cambodia.

2. Nature, Extent, and Forms of Mass Demonstrations

a. *Nature.*—(1) Mass demonstrations may be divided into those producing violence and those which remain peaceful. Local, state, and Federal statutes have been enacted to preclude violence at mass demonstrations; however, the nature of the issues, composition of demonstrating groups, nature of the leadership, the sites of demonstrations, and the likelihood of counter-demonstrations, all bear on the factor of violence and the preparations of security at any given demonstration.

(2) The leadership of groups capable of calling together significant numbers of demonstrators at a given time have been basically involved with civil rights, anti-war, religious, social, political, labor, and patriotic causes. Some of the leadership, particularly in the anti-war and political categories have, as part of their demonstration activities, sought to encourage acts of civil disobedience and confrontations. However, most leaders of mass demonstrations have not desired confrontations with authorities, in part because this may reduce crowd attendance.

b. *Extent.*—Mass demonstrations have mainly occurred in large cities or on college and university campuses throughout the United States. Sufficient people supporting the espoused demonstration aims must be within a reasonable traveling distance. On occasion mass demonstrations have drawn participants from almost every area of the country, but generally participants seldom come from distances greater than 1000 miles, with the great majority coming from a radius under 250 miles from the demonstration. One exception has been noted, the rock festival. While not strictly a mass demonstration, the rock festival or similar gathering has drawn enormous crowds into relatively remote areas of the country. Such festivals have usually been peaceful. However, the large numbers of participants pose unique problems for remote areas served by only a few police.

c. *Forms.*—(1) Mass demonstrations are essentially large gatherings of individuals at a given place at a given time in support of a given cause or for entertainment purposes. The patterns taken by these demonstrations are similar. The event is publicized by the groups involved and in the mass media, to include the legitimate press, campus press, and the underground press. Television press conferences are common. Normally an agenda is announced which calls for assembly of the participants at a given area to attend a rally and listen to speeches, or a march leads to a demonstration area where a rally is held with speeches and entertainment. Most notable examples of this form of demonstration are the 1967 march on the Pentagon and the October and November 1969 Vietnam Moratorium and Mobilization demonstrations. Spin-off demonstrations by radical participants have occurred, often with ensuing violence. This was true of the November 1969 Mobilization demonstration. Counter-demonstrations at peaceful gatherings have occurred more frequently in the recent past. Some of these counter-demonstrations have involved violence.

(2) While the great majority of demonstrators have been peaceful, a small fringe has produced confrontation and violence. This segment, basically amorphous but occasionally with some identifiable leadership, often equips itself with protective gear, including crash helmets and body padding, and may have clubs, concealable missiles, chains, and cans of caustic spray. Prior to going underground, the Weathermen conducted training for police confrontations. Such tactics are directly opposite to the more common tactics of civil disobedience, where participants may become limp and do not otherwise resist authorities. Civil disobedience, while nonviolent, has been used from time to time. Lying or sitting down in streets or hallways of public buildings has posed problems in the past. One demonstration organizer has recently called for such tactics to be employed in future demonstrations. In addition, plans have been developed to place inoperable vehicles at critical intersections in Washington, D.C., to tie-up the city.

3. Threat Forecast

a. *One year projection.*—Mass demonstrations will probably continue, commencing in the Spring of 1971. Anti-war groups have called for a return to Washington for mass demonstrations, with an emphasis on civil disobedience. Civil rights groups have also called for demonstrations in Washington, but plan to forgo a second "Resurrection City." Such demonstrations are likely to draw substantial numbers in view of their timing in the Spring and their already advanced planning. The nature of further demonstrations in the remainder of the period will depend, basically, upon the criticality of issues or the advent of another significant event such as the Cambodian incursion. The issue of Vietnam should fade as withdrawal proceeds, although demonstrations are likely to continue in some form. Ecological, racial or economic problems will probably produce other demonstrations. Mass demonstrations are subject to periods of waning size and effectiveness. Worries about possible violence tend to have a negative effect on the willingness of many potential demonstrators to participate in an action. In addition, fear of prosecution under local, state, or Federal law has an inhibiting effect on open appeals for organized street violence on a large scale. Thus, the problem of street disorders associated with large political demonstrations should not grow into a matter for the regular employment of active Federal forces in this period. It has been and should remain, with the possible exception of Washington, a matter of primarily local and state concern. The National Guard, particularly in Washington, D.C., may be used from time to time to supplement local police whenever it is feared that violence or crowd size may exceed the capabilities of local authorities. Threats of counter-demonstrations, as exemplified by the situations in Portland, Oregon, at the American Legion convention in the Summer of 1970, will probably continue to cause local officials to look to the National Guard as a reserve force.

b. *Five year projection.*—In the early 1970s it may be expected that mass political demonstrations and other large gatherings will continue to occur. The seeming immediacy of national problems and the deep personal involvement with complex issues not subject to immediate resolution (both largely brought about by the technological revolutions in the communications media), together with an ever increasing freedom of mobility, should insure that whether the issue be a mere desire for entertainment, withdrawal of overseas military commitments, national policies relating to race, the environment or other, as yet unperceived issues, large numbers of people are likely to continue to be drawn to mass demonstrations and gatherings. Security should remain within the capabilities of local law enforcement authorities with some support from the National Guard. While present trends indicate a growing polarization and increasing resort to violence on the part of some protestors, barring some cataclysmic and as yet unforeseen political crisis, disorders associated with mass demonstrations, to the extent they continue through 1975, should not require active Federal forces for their control. This conclusion would be subject to major change only if the domestic political climate were to degenerate to the point where open street conflicts, including those between opposing political factions greatly exceed their present levels.

D. Political Terrorism and Guerrilla Warfare

1. Present Situation

a. For purposes of this section, political terrorism is deemed to include organized conspiratorial activity with selective violence and revolutionary goals, but with limited participation. Guerrilla warfare is defined as a large scale organized, but irregular, paramilitary activity designed to promote civil strife in furtherance of revolutionary goals and the overthrow of the governing regime.

b. Research published by the National Commission on the Causes and Prevention of Violence in 1969 has given some insight into the quantitative and qualitative nature of political violence in contemporary America as compared with earlier periods in our history. What the evidence suggests is that political violence increased in the 1960s over previous decades, but that it remained less than the magnitude of civil strife experienced in the latter part of the 19th Century and early 20th Century, when the turmoil of the Reconstruction period was followed by massive racial and labor violence. The injuries caused by political violence over the last 30 years were found to be, proportionate to population, less numerous than those which occurred in the previous 30 years, 1909–1938.

c. The Commission found that the five year period, mid-1963 to mid-1968, had witnessed 239 hostile outbreaks by Negroes which resulted in 8,000 injuries and 191 deaths. This violence is discussed in the previous section dealing with racial disturbances. There were in the same period 170 anti-war demonstrations noted, which involved a total of about 700,000 people. Violence was initiated in about 20 cases. The sections covering student disturbances and mass demonstrations deal in part with this category. Finally, over 1,000,000 people participated in this five year period in 370 reported civil rights demonstrations, almost all of which were peaceful. None of these forms of mass protest fall within the definition of political terrorism.

d. The most significant form of political terrorism in the recent past developed in the early 1960s with white attacks on blacks and civil rights workers. The bombing of a church in Birmingham, which killed four young Negro children, and the killing of the civil rights workers Schwerner, Chaney, and Goodman in Mississippi, are indicative of this development. There were about 20 deaths between 1963 and 1968 involving this kind of white terrorism. Black terrorism against whites, mostly police, began in 1968. Overall from 1963 to 1968 there were about 220 Americans killed in violent civil strife. About 19 police deaths in the first nine months of 1970 could be attributed to such terrorism. The phenomenon has clearly accelerated in the immediate past.

e. In comparison with other countries, Americans have seldom organized for purposes of carrying out political terrorism. Had there been truly effective revolutionary organizations in existence, the levels of political violence which this country has experienced would have been much higher. The decade of the 1960s made the nation extremely sensitive to the problem of political assassinations, with the killings of President John Kennedy, Senator Robert Kennedy, Medger Evers, Malcolm X, and Dr. Martin Luther King, Jr. While these assassinations were in a sense political, in that the victims were chosen for reasons associated with their positions of political leadership, they were carried out by individuals for highly personal and, in some cases, deranged motivations. There is no evidence they were conspiratorial acts carried out by revolutionary organizations.

f. The recent past has noted a sharp increase in acts of political terrorism. Overall, from 1 January 1968 to 15 April 1970, 4,330 bombings, 1,475 attempts to bomb, and 35,129 threats to bomb were reported. Bombing and arson attacks on Federal buildings alone increased from 13, in the 12 month period ending 30 June 1969, to 38, in the corresponding period in 1970. Property damage increased accordingly, from $7,250 to $612,569. Threats against such buildings rose from 46 to 383 over this period.

g. In the 36 percent of the bombing cases where law enforcement officers were able to categorize perpetrators, 56 percent could be attributed to campus disturbances, 19 percent to black extremists, 14 percent to white extremists, 2 percent to labor disputes, and 1 percent to attacks on religious institutions. Eight percent were in aid of criminal activities such as extortion, robbery, and arson for insurance. These figures suggest that the current problem of bombings has been primarily the product of young radicals. The next biggest source of such incidents has grown out of racial tensions in the society.

h. To date, the overwhelming majority of the acts of terrorism, such as attacks on police and the 4,330 recent bombings, have not been carried out by nationally organized, conspiratorial, revolutionary groups or organizations. Rather they have been carried out by individuals or very small affinity groups who may share the revolutionary goals of some organizations, but who are acting essentially on their own without extensive coordination. This is not to say that there are not in existence radical groups and black revolutionary organizations whose goals and plans encompass such activity. One small radical organization of this nature has gone underground in the past year and one black revolutionary organization maintains a position which favors attacks on police, although only under a self-defense justification.

i. Guerrilla warfare, as defined above, involving widespread and coordinated paramilitary attacks on the structure of the state for the purpose of overthrowing the regime, does not now exist nor has it existed in our past, with the exception of guerrilla activity associated with the Revolutionary War and the Civil War. The evidence of political terrorism in our past and our more recent history does not rise to the level of what is commonly classed as guerrilla warfare or insurgency. Urban terrorism has been on the increase and this has led some to loosely categorize this as urban guerrilla warfare.

2. *Nature, Extent, and Form of Political Terrorism and Guerrilla Warfare*

a. *Nature.*—(1) The nature of political terrorism in our society as it presently exists involves two basic sources. The first has to do with the radical student movement which began to be evident in institutions of higher learning in the 1960s. Some of the individuals associated with this movement are no longer students and have shifted their attention to constituencies beyond the campus. The second major source of political terrorism involves acts of violence perpetrated by blacks in the furtherance of political goals. Both of these categories encompass individuals whose activities may be more a product of underlying psychic needs than rational pursuit of enunciated goals. A potential third source of political terrorism lies in the development of right wing violence, which might grow to significant levels in the future. It is not presently a problem of any substantial degree, although occasional incidents of terrorism and counter-terrorism have taken place within the recent past. This potential problem is discussed more fully below.

(2) The leadership of traditional leftist groups in the United States do not now advocate violence to attain their objectives. The basic objective of some of these older groups is to promote a Marxist-Leninist society through nonviolent means. The leadership of some of the newer revolutionary groups do advocate acts of violence as a method for furthering their goals. As noted above, however, the incidents which can be directly traced to the activities of such organizations make up only a small fraction of the total number of acts of terrorism. One of the major ancillary effects of the new revolutionary leadership and propaganda involving advocacy of terrorism is to give an articulated justification for terrorist acts carried out both by members of such groups as well as the more numerous unaffiliated individuals who are merely exposed to such thinking. Acts of terrorism, such as sniping and kidnapping, carried out by isolated individuals or small affinity groups have been hailed by leaders of revolutionary organizations as acts which further revolutionary objectives. This should not be misconstrued as necessarily indicating that these groups have either perpetrated or counseled such acts. Such incidents offer convenient publicity or propaganda ploys and are often seized upon for these reasons.

b. *Extent.*—Terrorist activity generally occurs in urban areas and on campus communities nationwide. Acts of destruction of property have also occurred at military installations and other targets associated with the Federal government and its war policies. Occasional attacks on isolated communications facilities have occurred in the past, although this is not common.

c. *Forms.*—(1) Arson, bombing, sniping, attacks on police, assassination, physical intimidation, beatings, kidnapping and hijacking are the most common forms of terrorism currently turned to.[1] Such acts may or may not occur with political motivation. The present political terrorism has mostly been carried out by individuals or small groups of dissidents. Tactics vary, but with the case of arson, acts of property destruction, and bombing, the usual targets are symbolic of the existing political system. Thus, police stations and equipment, Federal facilities, National Guard, and Reserve armories, ROTC facilities, Armed Forces Entrance and Examination Stations, selective service offices, campus research facilities working on military contracts, and corporations engaged in production of war materials and munitions, or otherwise symbolic of the corporate state, have all been targets. The less proficient bombers also have been known to inadvertently select themselves as subjects for obliteration.

(2) Arson is normally accomplished by the use of molotov cocktails. Military vehicles have been destroyed by placing wicks in the gas tanks and lighting them. Forewarning is usually not present in arson cases. However, with the case of explosive bombings forewarnings are common, both to prevent the loss of life as well as to take credit for the act. Bombs are usually left in areas of buildings accessible to the public, such as washrooms, trash receptacles, and hallways. The use of explosive laden automobiles has recently come to light. There have been several instances of attempted bombings from light aircraft. Bomb threats as well as actual bombings are quite common against all of the targets noted above, since these serve to harass and disrupt normal courses of activity.

(3) Sniping and other assaults on police usually occur on normal patrols, sometimes after a false report designed to lure police to an ambush area. Terrorist tactics are presently evolving, depending both on the immediate situation as well as the media attention given to other successful terrorist attacks.

3. *Threat Forecast*

a. *One year projection.*—The rise in political terrorism, as exemplified by attacks on police, bombing and arson, is likely to continue over the next year.

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[1] Airplane hijacking has already had a limited effect on active Federal forces, as a result of the decision to temporarily place military guards on selected aircraft in the fall of 1970.

Campus communities will remain focal points for much of this activity, particularly those attacks directed at symbols of the Federal government and its policies in Indochina. Additional deaths of students might help bring about a more unfavorable atmosphere for such activity, however. Attacks on police will continue to be seen in the larger urban areas, particularly in black communities. Kidnapping of officials, already common elsewhere, may also become a problem in this country in the next year. There has already been one instance of the kidnapping of a judge and this may indicate a trend in the offing, particularly in view of the wide media coverage of such activity elsewhere. Hijacking of airliners may decline somewhat, as it did over this past year, particularly as increased security measures come into play. Political terrorism will have the greatest impact on urban police forces and local, state and Federal investigative agencies. Political terrorism is not likely to involve National Guard or active Federal forces, except perhaps in security guard roles or in the restoration of essential public services disrupted by sabotage. The use of Canadian Armed Forces personnel to protect government officials from kidnapping in the Fall of 1970 may be a precedent for this country. The short term use of National Guard or active Federal forces as guards for state or Federal facilities is also a possibility.

b. *Five year forecast.*—Political alienation in campus communities will probably continue and some terrorist activity will probably remain associated with such alienation. The end of the war in Vietnam should reduce the most important source of moral and political outrage, although other issues may provide suitable pretexts for acts of terrorism. Overall, the end of the five year period may see a decline in the levels of this kind of activity, as repercussions from all levels of society begin to be felt. It is conceivable that the society will polarize to such an extent, politically, socially, and culturally, that such activity continues to rise as such frustrations on both sides grow. Stabilizing forces in the society should preclude this occurring, although it remains a possibility. Whatever the impact of political terrorism during this period, it will remain largely a police problem at the local level. National Guard or active Federal forces should be involved only in ordnance disposal problems, security roles, or in the restoration of essential public services which may have been disrupted by terrorist activity.

E. Labor Disturbances

1. Present Situation

a. The legitimization of the labor union in the middle 1930s and the subsequent functioning of the system of collective bargaining has largely ended serious labor violence in the United States. The institutionalizing of labor-management relations and the overall effectiveness of the resultant arbitration machinery has been a stabilizing influence in American society. Most unrest and violence deriving from labor disputes has traditionally been concerned with picket line activity. This has largely remained a police matter. Serious labor violence has involved the National Guard on occasion. Active Federal forces have not been used in connection with labor violence since 1921. A severe railroad strike during World War II and a steel strike during the Korean War did produce Presidential threats that active Federal forces might be used to restore services and production. It was not until the postal strike in 1970, however, that active Federal forces actually became involved in restoring an essential public service.

b. The postal strike pointed up a major area of unresolved issues which began to come to the fore in the 1960s. The "no strike" tradition at all levels of government had begun to be called into question by increasing numbers of local, state and Federal employees. One of the bargaining threats of governments involved in such disputes is that National Guard or Federal forces may be called in to perform necessary functions. Strikes or slow-downs by police, firemen, teachers, sanitation and hospital workers, and other public employees, have occurred in the recent past. Such strikes or slow-downs have a substantial impact on the health, safety and welfare of both large and small communities. Other than with the postal strike, however, the large scale assumption of health, welfare, or safety duties by National Guard or active Federal forces has not occurred to date.

2. Nature, Extent and Forms of Labor Disturbances

a. *Nature.*—(1) As noted above, labor disruptions impacting on law enforcement agencies fall into two broad categories. First, there are those which have enough associated violence to require police or National Guard intervention. Second, there are disruptions, such as the postal strike, which involve the interruption of an essential public service. The former category has been a declining feature of American life since the 1930s, although there remain occasional requirements for police or National Guard forces to enter in a peace keeping role. The latter category is a developing one. There has been little impact on National Guard or active Federal forces in connection with the interruption of essential public services so far, although erosion of the "no strike" tradition among government workers may change this in the future.

(2) Labor leadership in the nation is fully committed to making the system of collective bargaining work. Many strikes are long and bitter. What violence occurs from time to time almost never has the sanction, expressed or implied, of union leadership. Jurisdictional disputes among unions may also become bitter and on occasion violent. As with strike violence, however, violence associated with jurisdictional disputes or organizing efforts is not encouraged by union leadership. Violence almost always is the result of individuals or small groups acting without approval of leadership elements.

b. *Extent.*—Labor violence is normally centered, as might be expected, in the more highly industrialized areas of the nation. Plants and industrial sites have been the scene of most picket line violence. Other disruptions are common in downtown areas of cities or other construction areas.

c. *Forms.*—The most common forms of labor violence are scuffles at picket lines, where scabs or other individuals or goods may pass through lines of striking workers. Such violence may involve threats or other forms of intimidation. There may be the use of clubs, chains, brass knuckles or firearms. Strikes against trucking firms have often involved sniping at vehicles on the open road. There may also be the use of stench bombs, molotov cocktails or explosives. Spontaneous acts of vandalism, such as the overturning of vehicles, the setting of fires or the breaking of windows or furniture can occur. In the more recent past, efforts of minority groups to protest union discrimination have produced some violence at construction sites. Where collective violence occurs, there are unlikely to be more than a few hundred workers gathered at any one time.

3. *Threat Forecast*

a. *One year projection.*—Strikes and other labor disputes involving violence will occur over the period ending April 1972. They should remain only a police problem. Only in exceptional cases should disputes require National Guard intervention. There should be no need for active Federal forces to contain violence growing out of labor disputes. In addition to the violence traditionally associated with some labor disputes, the period may see a rise in disturbances connected with minority group pressures for equal employment opportunities, particularly in the construction and automotive trades. This also should remain a police problem. Strikes by public workers and other labor disputes may lead to the interruption of essential public services. It is possible that this may result in the employment of National Guard or active Federal forces to restore such services.

b. *Five year projection.*—There should be no substantial rise in the levels of violence associated with traditional labor disputes over the five year period. Conflicts over minority group employment may grow somewhat. Both matters should remain a matter primarily of police concern, although the National Guard may be called out occasionally in connection with particularly bitter strikes. Active Federal forces should not have any peace keeping functions to perform. Both the National Guard and active Federal forces may be more likely to become involved in the restoration of essential public services than over the one year period. This development will depend primarily on how well the "no strike" tradition of public employees holds up.

F. Developing Sources of Civil Disturbances

1. *Introduction*

There are a number of developing sources of civil disturbances. Some of these have previously been addressed in prior portions of the study. This section will deal with those sources which have not yet been firmly established as significant problems, but which by their very nature deserve separate examination due to their potential impact on the law enforcement authorities should they evolve into mature threats. The incipient nature of some of these phenomena prevents firm predictions of their development.

2. Other Minorities

a. The most significant development of minority consciousness in the post World War II period has been the growth of Negro group awareness. This new awareness has had a profound political, social, and economic impact and has helped create a climate of change in the country which has nutured the latent consciousness of other racial and ethnic minorities and other previously inchoate groups sharing common interests. The largest of these minorities which has begun to achieve a sense of unity are the Americans of Mexican descent, also known as Chicanos. In the Summer of 1970, a substantial civil disturbance involving Chicanos occurred in Los Angeles. This pointed up the fact that in the Southwest and West there are large concentrations of Chicanos who have begun to sense a group identity and will in the future be pressing for common goals. Substantial frictions could develop and, as already witnessed with respect to the situation of Chicano migrant workers in California, economic and political matters are already an issue in some areas. Puerto Ricans in some of the larger cities of the Midwest and Northeast have also begun to manifest a new group consciousness. In addition, American Indians over the last few years have similarly begun to press for common objectives.

b. Some violence and police problems have been associated with the changes in attitudes of each of these three groups. As noted above, Chicanos have been involved in rioting in Los Angeles. In New York City and Chicago, Puerto Rican youth groups have occupied public buildings. American Indians have "liberated" Alcatraz and have been involved with police in disputes over fishing rights in the Northwest. Beyond these three groups, there are other minority groups which may be subject to the same kinds of changes in outlook. This would include the large numbers of Americans of Chinese and Japanese descent in many cities. Law enforcement problems have been relatively minor to date. The size and frequency of disorders may increase in the future, however, and may come to have a significant impact on National Guard employment. The sizes of the minority populations involved are such that there should be no need for active Federal forces to contain civil disturbances which may be associated with these groups.

3. Threat Forecast

a. *One-year projection.*—The Spring or Summer of 1971 may see civil disturbances involving Chicanos in the Southwest or West. If they do occur, it is unlikely that containment problems would exceed the capabilities of local or state police. The use of National Guard forces should be unlikely, although it cannot be ruled out. There should be no need for active Federal forces. The likelihood of Puerto Rican involvement in significant civil disturbances should be less, with civil authorities able to control any disorders which may develop. This period may also see small scale incidents involving American Indians, although this too should remain a matter of only police concern.

b. *Five-year projection.*—The five year period may see substantially increased minority unrest grow out of an awakening sensitivity to existing social and economic injustices. The civil disturbances which have been associated with the growth of racial tensions may be paralleled by disturbances related to the drive for equality on the part of Chicanos, Puerto Ricans, American Indians, or other ethnic groups. Should such disturbances occur they should be able to be contained by local and state security forces. It is possible, however, that the National Guard may have to be employed on occasion. There should be no requirement for intervention on the part of active Federal forces.

4. Development of Right-Wing Violence

The rapidity of social change experienced in the 1960's has not to date led to the development of significant violence by right-wing extremist groups. Such groups have remained small, poorly led, factionalized, and without significant resources. These groups encompass both racist and fascist ideologies. It is possible that the growth of left-wing violence may lead to the development of counter-violence and vigilante movements from those who see a threat to their livelihood and way of life. The increasingly visible signs of the developing youth culture, as evidenced by changing dress and hair styles, drug use, and altered sexual mores, may further frighten those who see their personal values and the values they associate with the nation under fatal attack. Should this lead to street confrontations or other altercations, it would pose a problem for police and possibly the National Guard.

5. *Threat Forecast*

a. *One-year projection.*—Given the current small size of right-wing extremist groups, their fragmented nature and their lack of substantial resources, the period ending in April 1972 should not see the development of significant right-wing violence. Violence associated with such groups should remain isolated, infrequent, and generally within the purview of local police forces. There should be no impact on National Guard or active Federal forces.

b. *Five-year projection.*—It is conceivable that more significant right-wing violence may develop over the five year period. If events in Indochina come to be looked on as a defeat for the United States, the search for scapegoats may begin. Some may conclude the enemy was really here at home and try to take what they consider to be appropriate measures to deal with this fact. Sharply escalated radical or racial violence over this period might also set in motion vigilante movements or other counter-reactions. The continuing growth of sharply different values and lifestyles among the young could add to the possibility of right-wing violence developing. Stabilizing forces in the society should minimize such violence, should it begin to develop. The most likely form of violence would be street clashes between opposing political factions, violent counter-demonstrations, or hit-and-run attacks on headquarters or symbols of opposing political groups. Most of such activity would be a police problem. It would not involve the National Guard, except perhaps as they might be called upon to supplement local police forces where potentially violent demonstrations were expected. There should be no impact on active Federal forces.

6. *Violence Associated With Street People*

a. One of the more recent civil disturbance developments is the growing violence associated with groups of young people who have begun to congregate in some university and college communities and in certain urban areas. The term "street people" has been used to describe this amorphous class of youth, whose most common bonds are a general disaffection with societal values and a common cultural bond with one another. Many cites have now developed an identifiable community complete with underground press where these young people find themselves comfortable and where, in some cases they approach or already constitute a majority status. The prototype of this development was the Haight-Ashbury district in San Francisco. In the recent past, some of the street people have become engaged in confrontations with police in Los Angeles, Berkeley, Cambridge, Massachusetts, Washington, D.C. and Atlanta.

b. Police interference with the life styles of these groups, particularly as related to drug usage and anti-loitering ordinances, have precipitated much of this violence. The street people consider the police and often local merchants as obnoxious symbols of the alien culture they repudiate.

c. Confrontations to date have involved assaults on police, throwing of missiles, looting, smashing of windows, and other acts of vandalism. Protective helmets, padding and anti-tear gas equipment has become evident.

7. *Threat Forecast*

a. *One-year projection.*—The period ending April 1972 will probably see this phenomenon spreading to other cities. It should remain a police problem, however.

b. *Five-year projection.*—The five-year period ending in 1975 may see violence of this character continue to spread and possibly escalate in intensity. Continued confrontations with police may lead to the use of firearms on a regular basis. This might sufficiently alter the nature of these disorders to the point where National Guard intervention could be more likely. There should continue to be no impact on active Federal forces.

G. Natural Disasters and other Emergencies

1. *Present Situation*

Natural disasters and other emergencies fall within a broad definition of civil disturbances, since they often produce extensive civil disruption and frequently have a substantial impact on local law enforcement authorities, the National Guard or active Federal forces.

2. *Nature and Impact of Natural Disasters or Other Emergencies*

a. *Nature.*—Natural disasters include: blizzards, floods, tidal waves, smog concentrations, hurricanes, forest fires, tornadoes, ice jams, drought, and avalanches. Other emergencies include train and truck wrecks, plane crashes and ship disasters. In addition to loss of life in connection with these latter events, dangerous cargoes may be involved. Thus, there may be associated problems with nuclear radiation, chemical toxicity or explosions. Power failures or communication interruptions due to natural causes or possibly sabotage are also capable of causing wide civil disruption.

b. *Impact.*—The year 1969 gives a typical picture of the impact of these problems. In 1969, National Guardsmen were summoned on 87 occasions, in 27 states, to assist civil authorities in disasters and related emergencies. In all, approximately 14,000 Guardsmen were involved in duties of this nature. The use of active Federal forces is unusual. Other than in the area of explosive ordnance disposal, the National Guard is the primary source of assistance to local authorities.

3. *Threat Forecast*

a. *One-year projection.*—Natural disasters or other emergencies are sporadic and unpredictable. Local meteorological records, insurance statistics or other such compilations may assist in drawing geographical patterns and noting the frequency of particular occurrences. However, anticipation rather than prediction of such events is usually all that can be accomplished to assist in preparations. Civil authorities will be the primary agencies with responsibilities in this area. The National Guard will also be frequently employed in giving assistance in such cases. The use of active Federal forces will be unusual and will depend on local circumstances.

b. *Five-year forecast.*—Again, natural disasters are sporadic and not predictable. The five year period may see an increase in emergencies traceable to the growing technological complexity of our society. Smog emergencies, electrical power shortages or "brown outs", or possibly, nuclear incidents are a reflection of this development. As with the one year projection, civil authorities and the National Guard will be the primary agencies of responsibility, with active Federal forces acting only in an infrequent and supplementary capacity.

IV. CONSOLIDATED THREAT FORECASTS

A. Racial Disturbances

1. *One-year projection*

The threat of racial disturbances is expected to continue at roughly current levels through the period ending in April 1972. Controversies and racial frictions in many secondary school systems will be a pervasive problem throughout this period, although it should remain a matter for police authorities. The likelihood of active Federal forces having to be employed for the containment of such disorders should remain small. National Guard elements can be expected to be employed for such disturbances, particularly over the Spring and Summer of 1971. Local and state police forces will continue to bear the brunt of responsibility for controlling racial disturbances. Although there will be a wide variance in the problems experienced by different police forces in this regard, it is quite possible that the increase in racial tensions noted in 1970 will continue to rise over the period ending in April 1972. Should this prove to be the case, urban police departments can be expected to be forced to deal with a higher level of incidents and disturbances having racial overtones. Some of these problems will be directly associated with militant groups, a number of which have already exhibited a penchant for becoming involved in shootouts with police. The increasing resort to counterforce against police, including bombing and sniping, could also be expected to carry over to situations in which the National Guard or active Federal forces were employed.

2. *Five-year projection*

The five year period ending in 1975 should see some amelioration in racial cleavages in the society. Increasing access to all levels of the job market, the resultant growth of the black middle class, and the increasing diversion of resources to the nation's cities, all should contribute to the beginning of a mitigation of racial tensions. Racial problems will not be resolved during this period, however. Many cities will be entering transitional situations with respect to the shifting of political power. Such shifts will be reflecting earlier migratory patterns. Racial disturbances may decline somewhat in size and frequency, but they are unlikely to disappear. Local circumstances will determine when and where such disturbances occur. The likelihood of active Federal force involvement in the control of such situations is not expected to increase beyond the current low levels. Disorders will probably continue to involve National Guard forces from time to time, although the latter part of the five year period may see a decline in the frequency of such employments compared to the late 1960s. Local police forces will probably be expanding over the five year period, in response to public concern over crime. This expansion, while largely unrelated to the separate problem of civil disturbance control, will nonetheless give such police forces a greater capability to deal with such situations. The earlier part of the five year period may see police dealing with a continuing rise in incidents and disorders with racial overtones. This rise will largely remain within the realm of police control. Police forces in the latter part of the five year period may begin to see a decline in some of this activity as Negro "law and order" constituencies in many cities may begin to develop and press for the control of both individual and collective violence.

B. Student Disturbances

1. One-year projection

Student disturbances are expected to continue through the period ending in April 1972. The pace of withdrawal from Vietnam, and the continuance of the war, will still be issues, though this may diminish towards the end of this period as American disengagement proceeds in accordance with the President's decisions. The social inequities and cultural patterns of American life will continue to be a source of frustration to college and university populations which are acutely sensitive to the gap between what ideals the society professes and what the society in fact practices. Issues of environmental quality and technological impact will also develop over this period and may give vent to some disturbances. The security problems associated with student disturbances will usually be within the province of school security forces and local police departments. However, the National Guard will probably be committed occasionally over this period to deal with the larger disorders. It is unlikely that there will be a wave of massive, simultaneous disturbances, such was seen in May 1970, although there remains the possibility that some incident of national proportions could again spark this kind of widespread disruption. It is possible that legislative support for higher education may be affected. This could touch off disturbances in the short range period. In the long run it might be likely to dampen such activity. The likelihood of having to employ active Federal forces should remain extremely remote. The limited size of campus populations alone should insure this. Active Federal forces would have to be employed only in the unlikely event sizeable multiple campus disorders occurred in a state where the National Guard was already employed in other capacities. This situation has never occurred and, due to the size of most National Guards, it is extremely doubtful that such a situation will develop.

2. Five-year projection

The control problems associated with the campus disorders experienced to date have not grown beyond local and state capabilities due to the fact that these students were pursuing their studies in 1970 in more than 2552 separate institutions. While some of the largest state universities exceeded 30,000 students, institutions of this size were the exception rather than the rule. The rise in the student population over the period 1971–1975 will increase both the number of schools and size of some educational institutions. There will not come into existence student metropolises of a radically different type, say on the order of 75,000 or 100,000. Over the five year period there is likely to remain a problem of student disturbances, although the size and frequency may be somewhat diminished from the levels seen in the late 1960s and early 1970s. The war in Vietnam will have receded as an issue, but some of the other concerns which have been involved in campus disorders will not have been eliminated and, in fact, may be somewhat broadened. The developing campus concerns with issues of ecology and technological impact will not find the same convenient targets offered by classified military research or the presence of ROTC. Curriculum reform and university governance along with pressures for a less competitive academic environment should come more to the fore in this period. General antagonisms of young people towards what is regarded as a crassly materialistic society will probably grow over this period. These attitudes will be strongest in the institutions of higher education. In short, it is likely that there will continue to be sharp social, cultural and political differences between the college and university populations and the society at large. This will not necessarily result in regular employment of the National Guard, however. Campus police forces will be strengthened during the next five years, as will the capacities of many of the adjacent local police forces. This may help lessen somewhat the frequency of National Guard employment.

C. Mass Demonstrations

1. One-year projection

Mass demonstrations will probably continue, commencing in the Spring of 1971. Anti-war groups have called for a return to Washington for mass anti-war demonstrations, with an emphasis on civil disobedience. Civil rights groups have also called for demonstrations in Washington, but plan to forgo a second "Resurrection City." Such demonstrations are likely to draw substantial numbers in view of their timing in the Spring and their already advanced planning. The nature of further demonstrations in the remainder of the period will depend, basically, upon the criticality of issues or the advent of another significant event such as the Cambodian incursion. The issue of Vietnam should fade as withdrawal proceeds, although demonstrations are likely to continue in some form. Ecological, racial or economic problems will probably produce other demonstrations. Mass demonstrations are subject to periods of waning size and effectiveness. Worries about possible violence tends to have a negative effect on the willingness of many potential demonstrators to participate in an action. In addition, fear of prosecution under local, state, or Federal law has an inhibiting effect on open appeals for organized street violence on a large scale. Thus, the problem of street disorders associated with large political demonstrations should not grow into a matter for the regular employment of active Federal forces in this period. It has been and should remain, with the possible exception of Washington, a matter of primarily local and state concern. The National Guard, particularly in Washington, D.C., may be used from time to time to supplement local police whenever it is feared that violence or crowd size may exceed the capabilities of local authorities. Threats of counter-demonstrations, as exemplified by the situation in Portland, Oregon, at the American Legion convention in the Summer of 1970, will probably continue to cause local officials to look to the National Guard as a reserve force.

2. Five-year projection

In the early 1970s, it may be expected that mass political demonstrations and other large gatherings will continue to occur. The seeming immediacy of national problems and the deep personal involvement with complex issues not subject to immediate resolution (largely brought about by the technological revolutions in the communications media), together with an ever increasing freedom of mobility, should insure that whether the issue be a mere desire for entertainment, withdrawal of overseas military commitments, national policies relating to race, the environment or other, as yet unperceived issues, large numbers of people are likely to continue to be drawn to mass demonstrations and gatherings. Security should remain within the capabilities of local law enforcement agencies, with some support from the National Guard. While present trends indicate a growing polarization and increasing resort to violence on the part of some protestors, barring some cataclysmic and as yet unforeseen political crisis, disorders associated with mass demonstrations, to the extent they continue through 1975, should not require active Federal forces for their control. This conclusion would be subject to major change only if the domestic political climate were to degenerate to the point where open street conflicts, including those between opposing political factions, greatly exceed their present levels.

D. Political Terrorism and Guerrilla Warfare

1. One-year projection

The rise in political terrorism, as exemplified by attacks on police, bombing and arson, is likely to continue over the next year. Campus communities will remain focal points for much of this activity, particularly those attacks directed at symbols of the Federal government and its policies in Indochina. Additional deaths of students might help bring about a more unfavorable atmosphere for such activity, however. Attacks on police will continue to be seen in the larger urban areas, particularly in black communities. Kidnapping of officials, already common elsewhere, may also become a problem in this country in the next year. There has already been one instance of the kidnapping of a judge and this may indicate a trend in the offing, particularly in view of the wide media coverage of such activity elsewhere. Hijacking of airliners may decline somewhat, as it did over this past year, particularly as increased security measures come into play. Political terrorism will have the greatest impact on urban police forces and local, state and Federal investigative agencies. Political terrorism is not likely to involve National Guard or active Federal forces, except perhaps in security guard roles or in the restoration of essential public services disrupted by sabotage. The use of Canadian Armed Forces personnel in Fall 1970 to provide protection for government officials may be an unwelcome precedent for this country. The short term use of National Guard or active Federal forces as guards for state or Federal facilities is also a possibility.

2. Five-year forecast

Political alienation in campus communities will probably continue and some terrorist activity will probably remain associated with such alienation. The end of the war in Vietnam should reduce the most important source of moral and political outrage, although other issues may provide suitable pretexts for acts of terrorism. Overall, the end of the five year period may see a decline in the levels of this kind of activity, as repercussions from all levels of society begin to be felt. It is conceivable that the society will polarize to such an extent, politically, socially, and culturally, that such activity continues to rise as such frustrations on both sides grow. Stabilizing forces in the society should preclude this occurring, although it remains a possibility. Whatever the impact of political terrorism during this period, it will remain largely a police problem at the local level. National Guard or active Federal forces should be involved only in ordnance disposal problems, security roles or in the restoration of essential public services which may have been disrupted by terrorist activity.

E. Labor Disturbances

1. One-year projection

Strikes and other labor disputes involving violence will occur over the period ending April 1972. They should remain only a police problem. Only in exceptional cases should disputes require National Guard intervention. There should be no need for active Federal forces to contain violence growing out of labor disputes. In addition to the violence traditionally associated with some labor disputes, the period may see a rise in disturbances connected with minority group pressures for equal employment opportunities, particularly in the construction and automotive trades. This also should remain a police problem. Strikes by public workers and other labor disputes may lead to the interruption of essential public services. It is possible that this may result in the employment of National Guard or active Federal forces to restore such services.

2. Five-year projection

There should be no substantial rise in the levels of violence associated with traditional labor disputes over the five year period. Conflicts over minority group employment may grow somewhat. Both matters should remain a matter primarily of police concern, although the National Guard may be called out occasionally in connection with particularly bitter strikes. Active Federal forces should not have any peace keeping functions to perform. Both the National Guard and active Federal forces may be more likely to become involved in the restoration of essential public services than over the one year period. This development will depend primarily on how well the "no strike" tradition of public employees holds up.

F. Developing Sources of Civil Disturbances

1. Other minorities

a. *One-year forecast.*—The Spring or Summer of 1971 may see civil disturbances involving Chicanos in the Southwest or West. If they do occur, it is unlikely that containment problems would exceed the capabilities of local or state police. The use of National Guard forces should be unlikely, although it cannot be ruled out. There should be no need for active Federal forces. The likelihood of Puerto Rican involvement in significant civil disturbances should be less, with civil authorities able to control any disorders which may develop. This period may also see small scale incidents involving American Indians, although this too should remain a matter of only police concern.

b. *Five-year forecast.*—The five year period may see substantially increased minority unrest grow out of an awakening sensitivity to existing social and economic injustices. The civil disturbances which have been associated with the growth of racial tensions may be paralleled by disturbances related to the drive for equality on the part of Chicanos, Puerto Ricans, American Indians, or other ethnic groups. Should such disturbances occur they should be able to be contained by local and state security forces. It is possible, however, that the National Guard may have to be employed on occasion. There should be no requirement for intervention on the part of active Federal forces.

2. Right-wing violence

a. *One-year forecast.*—Given the current small size of right-wing extremist groups, their fragmented nature and their lack of substantial resources, the period ending in April 1972 should not see the development of significant right-wing violence. Violence associated with such groups should remain isolated, infrequent, and generally within the purview of local police forces. There should be no impact on National Guard or active Federal forces.

b. *Five-year forecast.*—It is conceivable that more significant right-wing violence may develop over the five year period. If events in Indochina come to be looked on as a defeat for the United States, the search for scapegoats may begin. Some may conclude the enemy was really here at home and try to take what they consider to be appropriate measures to deal with this fact. Sharply escalated radical or racial violence over this period might also set in motion vigilante movements or other counter-reactions. The continuing growth of sharply different values and lifestyles among the young could add to the possibility of right-wing violence developing. Stabilizing forces in the society should minimize such violence, should it begin to develop. The most likely form of violence would be street clashes between opposing political factions, violent counter-demonstrations, or hit-and-run attacks on headquarters or symbols of opposing political groups. Most of such activity would be a police problem. It would not involve the National Guard, except perhaps as they might be called upon to supplement local police forces where potentially violent demonstrations were expected. There should be no impact on active Federal forces.

G. Natural Disasters and Other Emergencies

1. One-year projection

Natural disasters or other emergencies are sporadic and unpredictable. Local meteorological records, insurance statistics or other such compilations may assist in drawing geographical patterns and noting the frequency of particular occurrences. However, anticipation rather than prediction of such events is usually all that can be accomplished to assist in preparations. Civil authorities will be the primary agencies with responsibilities in this area. The National Guard will also be frequently employed in giving assistance in such cases. The use of active Federal forces will be unusual and will depend on local circumstances.

2. Five-year forecast

Again, natural disasters are sporadic and not predictable. The five year period may see an increase in emergencies traceable to the growing technological complexity of our society. Smog emergencies, electrical power shortages or "brown outs", or possibly, nuclear incidents are a reflection of this development. As with the one year projection, civil authorities and the National Guard will be the primary agencies of responsibility, with active Federal forces acting only in an infrequent and supplementary capacity.

FEDERAL TROOP OPERATIONS IN CONUS

Year	Location	Situation
1907	Nevada	Labor.
1914	Colorado	Do.
1919	Washington, D.C	Racial.
	Omaha, Nebr	Do.
	Gary, Ill., etc	Labor.
1921	West Virginia	Do.
1932	Washington, D.C	Bonus army.
1943	Detroit, Mich	Racial.
1957	Little Rock, Ark	Do.
1962	Oxford, Miss	Do.
1967	Detroit, Mich	Do.
	Washington, D.C	Defense of Federal property.
1968	Baltimore, Md	Racial.
	Washington, D.C	Do.
	Chicago, Ill	Do.
		Civil disturbance prepositioning.
1969	Washington, D.C	Do.
		Do.
1970	New York City	Essential services.
	New Haven	Civil disturbance prepositioning.
	Washington, D.C	Do.

EMPLOYMENT OF NATIONAL GUARD IN FEDERAL STATUS

Year	State	Occurrence
1957	Arkansas	Little Rock school integration crisis.
1962	Mississippi	University integration disorders.
1963	do	Do.
	Alabama	Racial disturbances in Birmingham.
	do	University Integration disorders.
	do	School integration disorders in Three Cities.
1965	do	Civil Rights March—Selma to Montgomery.
1967	Michigan	Detroit riots.
1968	Chicago	Racial disorder.
	Baltimore	Do.
	Washington, D.C	Do.
1970	New York	Postal strike.

EMPLOYMENT OF NATIONAL GUARD IN STATE STATUS—1945-70

Year	Times employed		Total troops employed
1945-59	55		33,539
1960-64	33		65,867
1965	17		25,051
1966	17		18,598
1967	40	248	43,300
1968	107		150,000
1969	67		49,264
1970 (Jan.-May)	43		41,046

BOMBINGS JANUARY 1968–APRIL 1970

NUMBER	
Bombings	4,330
Attempts to bomb	1,475
Threats to bomb	35,129

PERPETRATORS	*Percent*
Student radicals	56
Black extremists	19
White extremists	14
Labor extremists	2
Religious extremists	1
Criminal	8

ONE YEAR PROJECTION (LIKELIHOOD OF EMPLOYMENT)

	Police	National Guard	Active Federal forces
Racial disturbances	Very likely	Very likely	Not likely.
Student disturbances	do	do	Do.
Mass demonstrations	do	Likely	Do.
Political terrorism and guerrilla warfare	do	Not likely	Do.
Labor disturbances	do	Likely	Do.
Developing sources of civil disturbances	do	Not likely	Do.
Natural disasters and other emergencies	do	Very likely	Do.

Very likely: Constant impact on the security force in question.
Likely: Probability of sporadic impact on the security force in question.
Not likely: Remote or little probable impact on the security force in question.

FIVE-YEAR PROJECTION (LIKELIHOOD OF EMPLOYMENT)

	Police	National Guard	Active Federal forces
Racial disturbances	Very likely	Likely	Not likely.
Student disturbances	do	do	Do.
Mass demonstrations	do	do	Do.
Political terrorism and guerrilla warfare	do	Not likely	Do.
Labor disturbances	do	Likely	Do.
Developing sources of civil disturbances	do	Not likely	Do.
Natural disasters and other emergencies	do	Very likely	Do.

Very likely: Constant impact on the security force in question.
Likely: Probability of sporadic impact on the security force in question.
Not likely: Remote or little probable impact on the security force in question.

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The National Guard in an Age of Unrest, A Report to the National Governor's Conference Committee on Law Enforcement, Justice and Public Safety, August 1970.

In addition to the above published studies and official reports, information on which the estimate has been based derives from FBI and Department of Justice sources as well as newspapers (including the underground press), periodicals, radio and television.

THE CIVIL DISTURBANCE THREAT 1971–75—UPDATE

1. The civil disturbance threat study was originally written in September and October of 1970. By mid-winter 1971, a number of shifts in public mood had occurred bearing on the civil disturbance problem. The major shifts are noted below. With these modifications, the civil disturbance threat study remains generally valid at this time as a basis for the Study Group's deliberations.

2. The most notable change in the civil disturbance picture was what one university president referred to as the "eerie tranquillity" which had come to prevail over the nation's campuses. In marked contrast to the student disorders in May 1970, the Fall of 1970 and the Winter of 1971 saw a new calm present on many campuses. This calm was not substantially disturbed by the movement of South Vietnamese troops into Laos in February 1971. The difference in this student reaction compared to the reaction to the Cambodian incursion may be in part only a reflection of seasonal distinctions, winter versus spring. However, the extended quiescence tends to support the view that May 1970 marked the high water mark for the six year long period of increasing student unrest. Campuses might again become highly inflamed in conjunction with some new military action or political policy deemed particularly provocative. Nevertheless, it now appears that the decline in large scale campus disorders may be occuring at a significantly faster pace than foreseen in the October threat estimate. This may result in a sharper decline in the likelihood of police and National Guard employment on campuses than was predicted in October 1970.

3. The alteration of mood on the nation's campuses was only one part of what seemed to be a more general relaxation of tensions. Increasing polarization in the society was a hallmark of the 1960s. While mid-winter of 1971 saw no healing of the racial, political or cultural cleavages in the society, the widespread sense of a continuing degeneration of public order seemed to clearly abate. Of course there remains the possibility that this new sense is merely the calm before the storm, that it is indeed an "eerie tranquillity" subject to abrupt alteration. It is currently felt, however, that something more than a mere pause in the momentum of past disorders is involved. It is quite possible that there has been a distinct reversal of the trends towards increasing large scale civil disorders. Only time will bear out the validity of this assessment. If it is valid, then an accelerated return to more normal conditions will be particularly evident in the areas of racial disturbances, student disturbances, and mass demonstrations with associated violence. There will no doubt be significant civil disturbances over the 1971–1975 period. Calls have been made recently, for instance, for anti-war protests involving civil disobedience in Washington, D.C. this Spring. At the present time, however, it is judged that the levels of these disorders may generally diminish at a faster pace than noted in the October estimate.

Senator ERVIN. Colonel, you speak on page 3:

> In none of the four areas which I have discussed do I propose extending the investigative jurisdiction of the Armed Forces. I argue the need to receive appropriate information from the civil agencies properly charged with investigative jurisdiction and the need to retain appropriate information.

I take it that the four areas discussed at the top of page 2: first, a successful conduct of military operations in foreign sovereignties; second, the detection and neutralization of foreign espionage directed against the Armed Forces; third, maintenance of the morale, discipline and loyalty of members of the Armed Forces; and fourth, the rational, equitable and legal conduct of that part of the business of the United States which is entrusted to the Armed

Forces are areas where the military may need information of civilians. I don't think there is a thing in this bill that would prevent the military from receiving such information from all civil agencies properly charged with investigative jurisdiction or would prohibit them from retaining information which they receive from those civil agencies.

Colonel DOWNIE. It may be necessary—first of all, as I say, I don't advocate extending the jurisdiction, Mr. Chairman. The Armed Forces now have jurisdiction in the United States in the case of espionage committed by the Armed Forces. First, this fellow doesn't do espionage in a vacuum, and the man who is handling him, directing him, is a civilian. The civilian investigative jurisdiction of the FBI requires close collaboration between the two services. In that sense I am not saying the Army should investigate the civilians, but they should investigate that military man and receive information concerning the military.

Senator ERVIN. I am unable to find a single syllable in this bill which restricts in any way the ability of the Armed Services to obtain information from any person who is a member of the Armed Services. It just doesn't apply to them at all. It only applies to individuals or organizations which are not a part of the Armed Services.

Colonel DOWNIE. But, I am afraid, Mr. Chairman, that is my problem. Without naming any foreign intelligence organizations neither they nor their members are members of our Armed Services, and yet we would need to collect information.

Senator ERVIN. Well, I don't think the Congress of the United States has jurisdiction to legislate to protect the rights of foreign civilians.

Colonel DOWNIE. This is in the United States, Mr. Chairman, as well as overseas.

But I am also afraid that I, as a professional intelligence officer, reading your bill, would say that ends my profession. I am not going to investigate anybody in these four areas. I am afraid we would misinterpret your intention.

Senator ERVIN. This doesn't really keep the Armed Forces from investigating anybody with respect to anything except their beliefs, their associations and their political activities, nothing else. If they find any sabotage or espionage this bill doesn't apply to them.

We found in the course of the subcommittee's investigation that the Army collected a tremendous amount of information about people's political beliefs, about not only their associations which were perfectly legitimate, but the associations of some of their kinfolk, some of their wives or husbands. There was information collected and stored as to what people's political views were, and I don't think that is any business of the government, much less the Armed Forces.

Colonel DOWNIE. I would agree with you on that, Mr. Chairman.

Senator ERVIN. I wouldn't object to putting an amendment in that this bill does not apply to any collection of information that is directed towards the detection or neutralization of foreign espionage directed against the Armed Forces. I wouldn't object to an amendment taking care of that objection, because it certainly is not intended to be that.

Colonel Downie. Mr. Chairman, you would console an elderly gentleman, retired, from Pennsylvania, if you would.

Senator Ervin. Thank you.

Do you have any questions?

Mr. Baskir. Colonel Downie, I wonder, since you are familiar with the information collected in the period the subcommittee investigated, I wonder if you would give an evaluation of that information in terms of what the military mission was at that time? How useful was it? Was it good information? Would it have served a purpose?

Colonel Downie. I am not sure that 99 percent of it served a useful purpose at the departmental level, that is, in Washington; it was undoubtedly of use to local commanders, if only to reassure them that everybody is looking around and there is no imminent civil disturbance.

In my personal opinion, the Army was as a civil disturbance instrument overused. I can see in Detroit in 1967 the unexpected situation requiring a considerable amount of force and the Army might be required. I can see in the April 1968 disturbances, they were so widespread, civil authorities simply couldn't extend themselves. But I believe that the Army should not be employed in the civil disturbance role under any circumstances. That may sound dreadfully revolutionary, but it isn't.

Pennsylvania boasts the first civil disturbance under this Constitution, the Whisky Rebellion, and George Washington did not use the regular Army. George Washington brought in militia from other States because his principle was that the regular Army should not be used against American citizens. I think that is a heck of a fine principle. As he applied that principle there is undoubtedly a need someplace in the executive branch for information on what is happening, how many of them are there, where are they, do they have clubs, where am I going to put whatever element I am going to use to suppress this thing, but I think it is purely academic as far as the utility of the Army is concerned. The Army or the Navy or the Air Force should not be used.

Mr. Baskir. Your feeling that the military has been called upon too often in civil disturbances leads to the next question I have.

During the course of the mid-1970's there was the development of what has come to be known as the Huston Plan. I know that plan was never carried out but there was subsequent to that the creation of something called the IEC or the Intelligence Evaluation Committee, which did include representation from the Department of Defense. About November or December, the President did say he disapproved of Army intelligence activities in the area of civilian activities, and in March came the DOD regulation.

Was the participation of the Defense Department considered an exception to the DOD regulation or just not covered?

Colonel Downie. I am afraid I am going to be lost in time. The Huston plan was in the summer of 1970, I believe.

Mr. Baskir. That is right.

Colonel Downie. I believe in the version of the thing which I have seen printed in the newspapers, there is a startling statement, the current limitations or restrictions on the military will continue. There was no DOD Regulation at that time. The reference was to the restrictions imposed by the Military Departments on themselves. The army was the most limited. There was no DOD policy involved in that one.

The IEC came about in December of 1970. I represented the Assistant Secretary of Defense for Administration on my attendance in this thing, and the DOD policy already was at that time that you accept nothing unless it has a direct bearing on the military. This policy was carried to the point where papers manufactured by the IEC were not taken into the Pentagon.

Mr. Baskir. I was going to ask you to describe the role of the Defense Department in the role of the operations of the IEC during December and the following few months.

Colonel Downie. Fundamentally, I think the role was a very restrained one in the sense that as the representative to the IEC my instructions were that you do not accept any requirement for any military service, DOD or DIA, unless that requirement clearly bears on the mission of the military and is a legitimate requirement by the military, and no matter what the IEC produces you will not accept any products unless it was of clear value to the military and the military mission. I don't believe there was ever any formal instruction. Mr. Froehlke sat me down and made it clear enough to me that it was a good solid policy to stick with, and I stuck with it.

Mr. Baskir. Mr. Jordan testified earlier this morning about the inability of the civilian authorities in the Justice Department to appreciate any limitations on the role of the military in this kind of activity. Did you find a similar thing about a year or so later with respect to the IEC?

Colonel Downie. I think the civilian professional members did, that is, the representatives of the intelligence agencies, because we have been well aware for years of the limitations which clearly keeps the military out of the investigation of civilians in the United States. This is not news to them.

Perhaps some of the Justice Department people who were more legally oriented than investigatively oriented had difficulty grasping that point.

Mr. Baskir. They should have been more alert to that. If they are legally oriented, they are supposed to know what limitations are on the Defense Department.

Colonel Downie. Here again the Delimitations Agreement is an agreement that originated back in 1942 with Mr. Hoover and the chiefs of the Naval Intelligence organization. It is not a law.

Mr. Baskir. I think an example would be the Posse Comitatus Act of 1878 and the tradition of military separation.

Mr. Snider. Colonel Downie, you noted the DOD directive does not apply overseas. Do you see any problems with applying that directive overseas?

Colonel Downie. Now, remember that I left the working Army in April of 1972, so I can't give you current information. Subsequent to my last Army assignment I worked with a Defense organization. But there seemed to be no problem that I was aware of while I was still with the Army.

Mr. SNIDER. Insofar as collecting information on civilians and their political activities abroad is concerned, don't you think the DOD directive should apply or do you think we should have some other sort of restrictions on this activity?

Colonel DOWNIE. I think there may be problems with the DOD directive in the legal sense. Berlin, as I understand, is one of those places where the United States has tried to provide as much local sovereignty as possible, but it is still technically an occupied country. I can see where the application of U.S. law doesn't work. You have no substitute such as the Justice Department which you would find in the United States.

Mr. SNIDER. Other law enforcement agencies?

Colonel DOWNIE. That is right.

Mr. SNIDER. There is also a section in the DOD directive that permits certain special operations that are defined as covert penetrations of civilian groups in the United States. Do you see any reason for that sort of exception?

Colonel DOWNIE. No; but I think whoever put it in probably thought the thing might pop up some day and he was doing two things. He was leaving an escape valve for himself in case he needed it. and he was directing, channeling information on the contemplation of such a thing to his office. It is sometimes better than to flatly prohibit something to say, ask me. At least you know the guy has it on his mind.

Mr. SNIDER. The Department has informed the subcommittee they have actually authorized a number of exceptions. They haven't given us the details—but no more than three a year since 1971. So we could have had as many as nine covert penetrations.

Colonel DOWNIE. Are these in the United States?

Mr. SNIDER. Yes, in the United States.

Colonel DOWNIE. News to me.

Senator ERVIN. The Posse Comitatus Act is pretty narrow in scope. It has three provisions in effect. The first is that the President can use the Armed Forces only when unlawful obstructions, combinations, or assemblages are impending against the authority of the United States, making it impractical to enforce the laws of the United States in a State or territory by the ordinary course of judicial proceedings. I don't think you need any political spying for that purpose.

The second is that when there is an insurrection or domestic violence which so hampers the execution of the laws of that State within the United States that any part of its people are deprived of their rights, privileges, immunities, and protections named by the Constitution as secured in the law the civil authorities are unable to protect that right, privilege, or immunity.

The third is when this insurrection or conspiracy makes impossible the execution of the laws of the United States or impedes the course of justice under those laws.

Now, I agree with you. I think that the military has been used too much. Of course, local people are always glad to have military brought in, because it not only gives them aid but also relieves them of a great deal of responsibility.

Colonel DOWNIE. And it is cheaper, also, Mr. Chairman.

Senator ERVIN. This bill is not intended in any way to interfere in any manner with the control of the military over its own personnel, and it is certainly not intended to obstruct the gathering of information on any person engaged in espionage. I think under the law of the United States, anybody is entitled to believe anything he wants to, no matter how foolish it may be. In fact, the Supreme Court has said a man has a right to believe anything as long as he takes no action against the United States. I think the first amendment also gives the right to everybody to pick his own associations and his own associates. This word "political activity" as used in the bill doesn't trouble me, because I think that political activities are not illegal activities. I don't think they have anything to do with espionage. I think it is just exercising your right to express yourself and to carry on activities relating to government.

But I would be glad to have any suggestions for drafting which would remove the objection you voice, because it is certainly not my intention to interfere with such matters.

Colonel DOWNIE. I appreciate that, Mr. Chairman, I really do.

Senator ERVIN. Counsel, any further questions?

Mr. BASKIR. Mr. Bowe, do you have a statement, also?

Mr. BOWE. Yes; I have a statement which I have submitted to the staff, and I would like to make a few comments from the statement with respect to the bill.

TESTIMONY OF WILLIAM J. BOWE

Mr. Chairman, I appreciate the opportunity to make a few comments today concerning the Senate bill before the committee.

I was assigned, when I entered the Army in 1968, to the Counterintelligence Analysis Branch of the 902d Military Intelligence Group headquartered in Washington, D.C.

Among the functions of the branch was the requirement to respond to intelligence and analytical requirements levied by the Office of the Assistant Chief of Staff for Intelligence of the Army at the Pentagon. It is in this connection that I had the opportunity to work with Colonel Downie, and in connection with this work, I received a great deal of familiarity with the issues that have been under discussion here today.

Reflecting the turmoil of the period of service in the Army, 1968 to 1971, I was engaged in the preparation of intelligence estimates on the necessity for deploying or employing Regular Army troops for use in the control of civil disturbances unable to be handled by State National Guards and local security forces.

The estimate which was submitted for the record, I think, extends for the proposition that no large collection mechanism of the Army or any of the other services was required in order for the Army to prepare reasonable threat estimates which are an essential guide to training functions related to this most sensitive of Army missions, control of civil disturbances involving citizens of the country.

In connection with the preparation of estimates relating to the commitment of Regular Army troops, I was engaged in the analysis of and was familiar with raw intelligence data produced by or disseminated to the Departments of Army, Navy, and Air Force, State National Guards, the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the Community Relations Division of the Department of Justice, the Law Enforcement Assistance Administration and city and State police agencies.

In the winter of 1971, during earlier hearings conducted by this subcommittee, I served as a member of the special task force that was established by the Secretary of the Army in order to collect information necessary to respond to the questions raised in the course of such hearings. Data on computerized and manual counterintelligence retrieval systems of the Army and the interface between such systems and other intelligence bureaucracies was developed by the special task force for use by the General Counsel of the Department of Defense, J. Fred Buzhardt, and the Secretary of the Army, Robert F. Froehlke.

As a result of the foregoing, I believe I am in a fair position to evaluate the need for legislation restricting the ability of the Armed Forces to conduct domestic intelligence activities of the nature and extent conducted in the 1960's and early 1970's.

There is no doubt in my mind that it is essential that a bill along the lines of Senate bill 2318 be enacted into law. In the absence of restrictive legislation, the Army has twice become deeply enmeshed in developing national intelligence networks aimed at the compilation of political data concerning civilians. The first period began during the First World War and continued through roughly 1924. The second period occurred during the 1960's. The unsupervised application of computers to domestic intelligence activities in this latter period by major and minor Army commands alike proved an enormous stimulus to the collection of personal information relating to individuals guilty of no violations of law.

The estimate entitled Civil Disturbance Threat, 1971–1975, which Colonel Downie submitted for the record and which was ordered prepared after the Kent State shooting, stands for the proposition that no direct intelligence collection effort by the Army was required in order for the Army to prepare from unclassified sources reasonable threat estimates which are an essential guide to training functions related to this most sensitive of Army missions, the control of civil disturbances involving citizens of the country.

With the vast potential for abuse inherent in the new technology and with the twice proven tendency of the military to unnecessarily expand domestic intelligence functions in a period of severe civil disorder, the Congress would be shirking its responsibility, in my opinion, if it did not pass legislation defining clear limitations on the domestic intelligence functions of the military. Department of Defense and Armed Forces regulations alone will not be a sufficient safeguard against the dangers inherent in coupling military surveillance of civilians with the new computer technology.

The key difficulties in the proper drafting of such necessary legislation are: (1) to permit the Armed Forces and the State Militia to carry out innocent housekeeping functions related to their presence in and around civilian communities; and (2) to permit the military to carry out effectively their missions under law to restore domestic order, without having either of these two functions improperly expanded in a period of upheaval and civil dislocation into a broad warrant to intrude into what must remain, essentially, the civil realm.

In my view, the bill before us today does not fully surmount these two difficulties. Therefore, I respectfully offer the following suggestions for amending Senate bill 2318.

First, the proposed new subsection 1386(b)(4) of chapter 67, title 18, United States Code, found on page 3, lines 10 to 12 of the bill, should be deleted in its entirety in my view. This subsection, as presently drafted, provides an escape hatch whereby State militia are excepted from the limitations of the bill whenever such militia are under other than Federal control. This is virtually all of the time. It seems to me that the restrictions imposed by the bill are not unreasonable and to permit State militia units to compile otherwise prohibited information, except during the very limited period when they are subject to Federal control, would be to open a back door through which Federal Armed Forces could gain access to otherwise proscribed information.

Second, I would recommend a section in lieu of the deleted section, and I have submitted to your committee a text of this proposed section, which appears as exhibit A to this statement. I believe the proposed text makes clear that the ordinary and inevitable contacts of the Armed Forces with civilians, which arises out of the presence of military installations in civilian communities, are not proscribed by the bill.

Senator Ervin. What effect does this bill have on those contacts? I can't see it. This bill is very narrow.

Mr. Bowe. I can see speech requests coming in for military people. I believe Colonel Downie mentioned that there is, inevitably, information collected pursuant to the sale and disposal of certain surplus military equipment. Since I don't feel that a myriad activity——

Senator Ervin. There is nothing in this bill that would affect the sale of surplus military property. It doesn't even touch the subject. The only thing this prevents would be the collection or the acquisition of information by the military relating to beliefs, associations, and political activities of people not having a relation to Armed Forces.

Mr. Bowe. Query whether the possession of Congressional Directory by a member of the Armed Forces would involve a proscribed activity under this legislation in that it would pinpoint information on the political beliefs of civilians?

Senator Ervin. I can't concede that. I cannot see how this would affect the ordinary relationship between the military and civilians. I am at a total loss to understand that. I am willing to receive information and suggestions for drafting, but I can't see it. It doesn't undertake to regulate this. It simply undertakes to regulate the use of the military to spy on civilians for the purpose of obtaining information about their beliefs or their associations or their political activities.

I will say this: I don't think Congress ought to regulate the State militia unless it is called into service for the Federal Government or into training. I don't think Congress ought to undertake to regulate what the Governor of a State, as the commander in chief of a militia, can do.

Mr. Bowe. I suppose if you fail to treat the State militia in the same way you treat Federal Armed Forces, you run a clear likelihood in a period of disruption that the State militia, prior to being called into Federal service, will collect a vast amount of information concerning political beliefs of civilians and this information will be spread in files up and down the chain of command. Then the militia will be called into Federal service and the storage and use of this information will all be illegal.

Senator Ervin. I think the right of a Governor to use the militia is much broader than the right of the President to use the Army, because most State laws provide that the Governor in his discretion can use the militia for the purpose of assisting the civilian authorities when the civilian authorities are unable to cope with the situation. That is quite broader than the Posse Comitatus Act.

Mr. Bowe. Except it seems to me that whether or not a State militia, in collecting information, is acting legally or illegally depends upon a presidential proclamation placing the militia in Federal service. Following the giving of such a proclamation, State militia could find they were in violation of a law. On their way to control a civil disturbance situation, State militia could be destroying the very information that under this law they had collected through the exception.

I believe that this is a technical problem which should be addressed.

While it is always possible that individual commanders may attempt to broadly construe their permitted activities under this legislation in a way not intended, it is my feeling that if Senate bill 2318 is enacted into law, such activities will never get out of hand in the way they did two other times in this century when no legislation existed and there was no legislative history offering guidelines for proper domestic military intelligence activities.

Finally, I would like to suggest that a section be added to the bill which would specifically authorize the maintenance of limited but proper data bases essential for the efficient conduct of military operations undertaken pursuant to 10 U.S.C., sections 331 through 333. A draft of this proposed section has been submitted as exhibit B to this statement.

It seemed quite clear to me during my work with Colonel Downie that there was absolutely no question but that there was a broad educating function to be served within the Army and the other services in order to give commanders at all levels an accurate and undistorted view of their missions in periods of civil dislocation. Also, there clearly was a need to collect and disseminate general planning data without which military operations could not be effectively conducted.

If you do not properly bat down alarmist opinions, which become very widespread in a period of unrest, then you run the risk that troops and commanders, when they finally are committed to a situation, will be unfamiliar with the nature of the threat that they are addressing. Since the commitment of Armed Forces to control civil disorders involves the use of a blunt instrument to begin with, if you send in people with an incorrect perspective of what they are actually going to be dealing with, you may find yourself faced with the kind of tragedy that occurred at Kent State. It would be my recommendation that some estimating function at the departmental level be specifically authorized by the bill in order to serve the training and informational purposes essential to prevent unnecessary loss of life.

It is felt that the section set out in exhibit B would be a useful addition to the bill in that it would more precisely strike a proper balance between the legitimate needs of military forces in preparing for civil disturbance activities and the illegitimate collection, storage, and dissemination of information on individuals and organizations beyond the limits of strict military necessity. It is further believed that a section along these lines would be in keeping with the recommendations made by Cyrus Vance in his afteraction report prepared following his service as a special representative of the President in Detroit during the riots in that city in July 1967.

It is also necessary to insure that the Armed Forces, and particularly the Army, have a clear idea of whether or not there is in fact a military requirement for them to be committed to a particular situation. There is a long tradition in this country of keeping Regular Armed Forces from being committed to civil disturbances except where absolutely necessary. I think it is important that the commitment of the Federal Armed Forces never be made on political grounds. With the departmental level estimating function that I have suggested be retained, I think it is more likely that commitments will be made on military grounds alone. Officers with operational responsibility will have disorders placed in proper perspective and you will also insulate the Army from political pressures that might improperly intrude into the question of whether or not Federal forces should be committed in a given case.

Senator Ervin. That is one of the purposes of this bill, to keep the Army out of political affairs. I don't think it is any business of the Army to collect information concerning political activities of people with no connection with the Army.

Mr. Bowe. One thing that I encountered as an analyst in the later part of the 1960's was the fact that there was a lieutenant general of the Army and an Air Force major general in command of 180 officers and enlisted men assigned to the Directorate for Civil Disturbance Planning and Operations, later the Directorate for

Military Support or DOMS, the operational arm established to coordinate Federal troops once they had actually been committed to a civil disturbance. One hundred or so enlisted men is not a large command for officers in such a Directorate unless civil disturbances actually give rise to the opportunity to exercise the potentially broader command functions that they are charged with. When civil disturbances require Army intervention, task forces are mobilized and the command function of these officers is expanded. Inevitably, in a period of declining civil disorders, if you have a large organization searching for a mission, there will be a tendency, I think a perfectly innocent one, for those charged with operational responsibilities to inflate the likelihood that Federal troops will have to be committed. This, in turn, increases the chance that an atmosphere will be created which will make more commitment or deployment of Federal troops more likely, even though they may not be strictly required due to military necessity. Upon reflection, it seems to me that it is in the interests of both the citizenry and the Army to have somewhere within the Army a nonoperational element charged with giving independent analyses of the situations that are likely to involve, or more importantly not involve, the Army.

Senator Ervin. There is nothing in this bill that would interfere with that, unless they send out military agents to get information about the beliefs and associations and views of political activities. This bill wouldn't affect that at all.

Mr. Bowe. Well, I am pleased to hear that is your view.

Senator Ervin. I don't think you can draw a bill and specify everything it doesn't apply to. You would have to draw a bill as long as the U.S. Code, I am afraid.

I think the bill only applies to the things it says it applies to.

Any questions?

Mr. Baskir. No.

Senator Ervin. Thank you very much. I appreciate your appearance.

Colonel Downie. Thank you.

Mr. Bowe. Thank you.

[The exhibits referred to follow:]

Exhibit A

(b) The provisions of this section shall not apply to the use of the Armed Forces of the United States or the militia of any State * * *

(4) to collect, maintain, store or disseminate information relating to liaison with local, state and federal officials or community organizations and groups for the purpose of establishing and maintaining community relations in the vicinity of military installations or defense facilities.

Exhibit B

(c) Nothing in this section shall be construed to prohibit the collection, maintenance, storage, dissemination or development of:

(1) Strategic and tactical information reasonably required for adequate preparation for operations undertaken pursuant to Title 10, United States Code, Sections 331, 332 and 333, including, but not limited to, identification of bivouac locations, preparation of maps, development of logistics data, ground and air reconnaissance and such other general planning and operational information as the Secretary of Defense by regulation, may provide;

(2) Liaison information related to local, state and Federal officials and

non-governmental persons and organizations useful in the support of military operations undertaken pursuant to Title 10, United States Code, Sections 331, 332 and 333; or

(3) Estimates as to the likelihood of deployment or employment of military forces in connection with military operations undertaken pursuant to Title 10, United States Code, Sections 331, 332 and 333, prepared through the analysis of unclassified sources of information generally available to the public or other sources of information received through liaison with local, state and federal agencies.

Provided, however, that nothing in this subsection 1386(c) shall be construed to permit the maintenance, storage or dissemination of extensive files and records, whether manual or computerized, relating to individuals or organizations; and provided, further, that all information permitted to be collected pursuant to this section which relates to the political, social or religious beliefs, associations or activities of individuals or organizations which is not transferred to civilian authorities for law enforcement purposes, shall be destroyed within sixty days following the completion of military operations conducted pursuant to Title 10, United States Code, Sections 331, 332 and 333.

Mr. Baskir. Mr. Chairman, our final witness this morning is Mr. John Shattuck, staff counsel for the American Civil Liberties Union.

Senator Ervin. Welcome to the committee. I appreciate your appearance.

TESTIMONY OF JOHN H. F. SHATTUCK, NATIONAL STAFF COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Mr. Shattuck. Mr. Chairman, I am grateful for the privilege to appear today, particularly in support of something as important as the legislation that is being discussed.

I have a lengthy statement, as you can see, and a number of exhibits which have been submitted for the record. I will summarize most of the statement, but I would like to read from one or two what I consider to be particularly significant parts.

The subject before the subcommittee is——

Senator Ervin. I might state that your complete statement, which is an excellent statement and very fine review of the judicial decisions bearing on these questions, will be printed in full in the body of the record immediately after your remarks.

Mr. Shattuck. Thank you, Mr. Chairman.

The subject before the subcommittee is of extremely great and special interest to the American Civil Liberties Union, which was, and I must stress, still is both a target and an active opponent of military surveillance of political activity.

I would like to reiterate, as the Chairman has been repeatedly pointing out this morning, that S. 2318 addresses an evil which can be very precisely defined, and that is the collection by the Army or by any military unit of information on the political views, beliefs, and activities and associations of civilians.

Much of what we know about military surveillance is known because of the efforts of this subcommittee and its chairman and staff, and I won't attempt to improve on their exhaustive efforts.

My statement is divided into three parts; the first dealing with litigation, the four lawsuits in which the American Civil Liberties Union has been actively involved; the second dealing with the constitutional issues which we think must be stressed in order to put this legislation in the proper perspective; and third, comments on S. 2318.

The litigation which I have discussed I believe illustrates two important points: first, in two decided cases courts have declined to adjudicate challenges by civilians to military surveillance. But they have indicated that the issues presented are serious and amenable to legislative action.

Second, two other cases now still pending in the courts indicate to varying degrees that military surveillance is still very much a live issue, despite claims by the Army that it has dismantled its surveillance apparatus.

The decided cases are, first, *Tatum* v. *Laird*, which I am sure is very familiar to the chairman in view of his great assistance on behalf of the plaintiffs in the Supreme Court in his *amicus* presentation.

Tatum was a lawsuit brought by a variety of individuals one year before this subcommittee's hearings. The allegations in the suit were necessarily generalized because little information about Army surveillance had yet come out. In the district court the judge refused to permit an evidentiary hearing because he thought that what he was dealing with was a newspaper clipping service. The district judge scoffed at the rejoinder by plaintiff's counsel that "newspapers don't have guns and jails."

A year later, after the subcommittee's hearings, the court of appeals remanded the case for trial to probe the full scope of military surveillance and determine if any judicial remedy was possible.

The Supreme Court in a controversial opinion dismissed the complaint on the grounds that the plaintiffs had failed to demonstrate any injury beyond the general claim that the Army intelligence system had violated or invaded the first amendment rights of citizens at large. Four dissenters on the Court said the plaintiffs should have had a trial. In my view the majority opinion in no way disposes of the issue, but in fact implies it is more appropriate for legislative treatment.

Another case litigated in the shadow of *Tatum* was *ACLU* v. *Westmoreland*. There, the Seventh Circuit Court of Appeals declined to treat the issues on the merits because they were then pending before the Supreme Court, but it did indicate that the issues were serious and they should be dealt with as constitutional questions and not merely as some administrative action by the executive branch.

Now, the two pending cases which I would like to discuss are indications of ongoing surveillance by the Army. The first, *People Against Racism* v. *Laird*, is a case pending in the Federal district court in Washington since 1969. It was stayed pending the decision of the Supreme Court in *Tatum* v. *Laird*, but it is now being litigated again. It involves the stopping of a bus chartered by some demonstrators who were going to a demonstration in Wilmington, Del., from Washington. The bus was stopped by agents from the 116th Military Intelligence Group, and a substitute driver was put on the bus who the plaintiffs allege—and it is not yet clear what the facts are—was in the employ of Military Intelligence. A delay occurred and the demonstrators finally left in their bus.

The point I want to make here with respect to this suit is that in response to the plaintiffs' first amended complaint filed last November, the Army admitted it continued to maintain files on three of the six individual plaintiffs and an index card on the organization, People Against Racism. It stated under oath in its answer that it did not know whether the files had been disseminated outside of the Army, and the case is now going further to discovery.

These files are being maintained, in my view, contrary to the statements by the Solicitor General and the Supreme Court that the Army's surveillance program has been dismantled and contrary to applicable regulations, including Defense Department Regulation 5200.27.

The second case which I would like to describe in somewhat greater length is very current. It involves surveillance which came to light last summer, which the chairman discussed briefly earlier this morning, of a variety of American civilians in Germany. Senator Weicker touched on this subject yesterday in his testimony on the joint hearings on surveillance and disclosed certain previously classified documents pertaining to the subject.

In order to describe the facts as accurately and in as much detail as possible, I would like the chairman's indulgence if he would allow me to read portions of pages 7 through 10 of my statement. Certain documents on which the statement is based have been submitted for the record, and I am prepared to answer questions about them.

The suit was brought by 16 American civilians, and was filed on February 19, 1974 against the Secretary of Defense and the command structure extending down to military intelligence units in Germany. It alleges four categories of intrusive surveillance, all occurring as recently as last summer, and in our belief continuing right now.

First, wiretapping; second, infiltrations of organizations and private meetings; third, blacklisting and political intelligence gathering; fourth, opening of private civilian mail. Most of the specific allegations are supported by documentary evidence. Much of the evidence was supplied to the plaintiffs and released to the public by Army Intelligence agents, who, like the agents testifying before this subcommittee in 1971, knew what they had been commanded to do was illegal and unconstitutional and acted out a sense of public duty in making their disclosures.

The evidence indicates that the Army's attention has focused particularly on American civilians in Berlin and in the Heidelberg area. Among the former are a group of citizens who worked in the presidential campaign of Senator George McGovern, and following the 1972 election continued to work in support of the platform adopted at the 1972 Democratic National Convention. In early 1973 the group was formally chartered as an affiliate of the Democratic National Committee under the name, "Berlin Democratic Club." The evidence reveals that starting sometime after August 1972 agents of the 66th Military Intelligence Group in Berlin began to infiltrate the organization and file detailed reports on its activities. One such report indicates that the group adopted the Bill of Rights as its Constitution and that it did not seem to be inclined toward "subversive activities." Nevertheless, the group was branded "CS," or "countersubversive"—the label which the Army attached to the reports, under which they were filed.

Details about the personal lives of BDC members were recorded, including their marital status and attitude toward their work. Many of them are students or faculty members at the Free University in Berlin. More important, however, is the fact that their political views were exhaustively reported and analyzed, in an often sophomoric attempt to determine their "aims" and predict their actions. Apparently, much of this information was collected through "intercepts," both of mail and of telephone conversations. For example in June 1973 the McGovern organization, then the Berlin Democratic Club, collected 330 names on a petition urging the initiation of impeachment proceedings against President Nixon, and the petition was "intercepted" and photographed after it was put in the mail to House Speaker Carl Albert, and now contained in the military files. There were conferences sponsored by the group, one in February of 1973, on GI rights and American civil liberties, which were exhaustively reported in Army files; contacts between the groups and various underground newspapers; contacts between the Berlin Democratic Club and LMDC lawyers; and the sponsoring of a conference in June 1973 on "Watergate—Its Meaning and Significance." This was detailed in a report to the highest intelligence officer in Europe, Major General Harold Aaron, then the Deputy Chief of Staff for Intelligence, now the Army's Staff Intelligence Officer in the Pentagon.

Another target of military spying in Germany is a group of civilian attorneys who regularly provide counsel to servicemen in court martial proceedings and other military cases. Conversations among lawyers working for the Lawyers' Military Defense Committee and their clients were intercepted on at least one wiretap installed on the phone of one of the plaintiffs, Mary-Jo Van Ingen Leibowitz, who is an American free lance journalist and consultant to LMDC. Conversations overheard on the wiretap, as revealed by Army documents summarizing them, include discussions about how to conduct the court martial defense of one of the plaintiffs, Larry Johnson, a black GI who has since been discharged from the Army.

According to the Army Intelligence agents who disclosed the wiretapping, more than 15 volumes of classified surveillance documents, including the records of other wiretaps on LMDC lawyers, were destroyed by the Army immediately after the disclosures occurred last August, thus further indicating that the Army knew the entire operation was illegal. It should be noted that the principal person who disclosed many of these documents, Army Specialist 4 John McDougal, was threatened with charges, in fact, charges were brought against him immediately following disclosures, but when his lawyer gave notice that he intended to base his defense on the unconstitutionality of the surveillance these charges were dropped.

An even more telling admission by the Army that its surveillance program could not be defended in court was the official withdrawal of 8th Army Regulation 381–25, "Military Intelligence Counterdissidence Program," in early August 1973, immediately after the first reports about the wiretapping and infiltration began to appear in the press, and little more than a week after the regulation was promulgated on July 23. The regulation defined "dissidence" as "manifestation of a rejection of military, political, or social standards" and authorized military intelligence agents to collect information about civilian or military "dissidents" by a variety of covert means.

Other targets of the Army's wiretapping and infiltration were American clergymen residing at the Goessner Industrial Mission in Mainz and underground newspapers and their American staffs. The Goessner Mission is a Protestant organization jointly sponsored by the U.S. National Council of Churches, the World Council of Churches, and the German Evangelische Kirche. Two of its residents, Rev. David McCreary and Rev. James Stillman are the subjects of several 66th Military Intelligence Group surveillance reports and are plaintiffs in the BDC suit. The American underground newspapers which have been kept under surveillance include *Forward*, published in Berlin, and *Fight Back*, published in Heidelberg. The intensity of this surveillance is demonstrated by one classified document from the Army's files: a photostatic copy of a letter to the staff of *Forward* from the librarian of the College of Charleston, S.C., ordering a subscription and requesting back copies of the newspaper for the college library.

All of this surveillance was conducted with an immediate and palpable effect on the lives of the plaintiffs. Apart from the fear and dissension which it created among the moderate activists of the Berlin Democratic Club, and the inhibitions which it injected into the relationship of LMDC lawyers with their clients, it also caused two of the BDC plaintiffs to lose their jobs and a third to be threatened with deportation. Jay Brady and David Harris, both members of BDC, were fired from their positions at the American exhibit in the Berlin Industries Fair on October 31, 1973, for what the director of the exhibit later told other employees were "political reasons." Both Brady and Harris had worked for *Forward*, but their names never appeared in any issue and they could not have been linked to the newspaper except through surveillance. Another plaintiff, Karen Bixler, a staff writer for *Fight Back*, was threatened with deportation from Germany in September 1973, based upon the recommendation of the Office of the Chief of Staff for Intelligence, U.S. Army, Europe, which provided a "fact sheet" on her activities to the German authorities. She was subsequently permitted to remain in Germany when the German government determined not to pursue her case after her marriage to a German citizen.

The Army's own documents suggest that it was trying to establish the existence of a conspiracy to subvert Army enlisted men, linking the Methodist missionaries, the LMDC lawyers, the Berlin Democrats, underground newspapers, foreign Communist parties, and antiwar activists. There is even one document which is particularly interesting, which I am not sure is included among those submitted to the committee, in which the various organizations are put together in a spiderweb purportedly showing who relates to whom and how the various contacts are made. When looking closely at the document you will find no individuals or organizations other than those I have described. The Army has not charged any of them with any conspiracy.

Furthermore, the briefing given to the highest intelligence officer in Europe on this subject indicated that the McGovern group had engaged in no activity that warranted further surveillance by the military, but nevertheless the files continued to be kept. So, I would suggest this is a perfect example of what the chairman and the subcommittee and the Congress is concerned about in this legislation.

Very briefly, Mr. Chairman, I will summarize the remainder of my statement.

The constitutional issues involved—and I hesitate to discuss them in the presence of an eminent constitutional authority—are, first, an invasion of free speech and association. The first amendment has long been held to prohibit compulsory disclosure of political ideas and beliefs as the price of engaging in political activity. It is very important to note that this prohibited involuntary disclosure doesn't depend upon any showing of chilling effect or inhibition or injury in addition to the disclosure itself. The impact on the first amendment exists regardless of whether citizens stop exercising their rights, if they are forced to disclose what they are doing, what their beliefs are and the like. To the extent the Supreme Court majority required proof of additional injury in the Tatum case, such as the loss of a job, I would respectfully submit that the Court misconstrued the first amendment issues in the case, and I think evidence of this is the fact that many recent challenges to Government surveillance have been held to be justiciable on this very theory despite *Tatum* v. *Laird*.

The second major constitutional issue is the privacy and the fourth amendment rights of civilians, and there is a close relationship between the fourth and first amendments. The fourth was originally fashioned to protect early citizens against the problems that they faced under the English rule where the British writs of assistance were used to ferret out political dissidents without any specificity. The fourth amendment was described by Justice Stewart as originally intended principally to protect against political searches.

The special importance of the fourth amendment to searches directed to speech, I think, was pointed out by the Supreme Court itself 4 months prior to the Tatum decision in the *U.S.* v. *U.S. District Court*, in which a unanimous Court held the fourth amendment applied to the interception of political conversations claimed by the Government to endanger domestic security.

Finally, the developing privacy law is an important interest to be protected by the legislation here. I have spelled that out in detail in my statement.

I don't think it is necessary in light of the testimony this morning and the chairman's presentation to do more than very briefly summarize the lack of military authority to conduct civilian surveillance. It is quite clear the legislation is intended to implement not only the constitutional provision in article I, which expressly gives the Congress the power to regulate armed forces, but to further emphasize the lack of legislative authority in the insurrection statutes which have been discussed earlier this morning, which do not apply to circumstances prior to the President's calling out of troops. Any doubt about this could be resolved, I think, by reference to the Supreme Court's 1968 decision in *Schneider* v. *Smith*.

Finally, the inherent power theory, which is constantly bandied about in hearings of this kind by administration officials and in court by administration lawyers clearly does not apply to this situation. The inherent power doctrine can never prevail when Congress has spoken to the contrary. Also, it has been repeatedly held that the inherent power theory doesn't justify military necessity, which violates constitutional rights and is always subject to judicial review.

Finally, Mr. Chairman, I have several brief comments on the bill itself. One might ask why we need new legislation at all if the law is already clear. I think this is one of those rare instances where the law is clear but the practice is so much to the contrary that it is practical to enact S. 2318.

The prohibition contains very clear and precise language implementing what the chairman has repeatedly stated this morning as a prohibition against the collection of political information about beliefs and activities and associations of civilians.

Three comments I would like to make on it which helped me in determining my support for it.

First, the legislative prohibition is essentially jurisdictional. It prohibits the military from conducting the activities in question. While we have made ourselves clear in other settings that we believe political surveillance is an evil to be generally dealt with in legislation, this is not the bill. This is a bill to prevent the military from doing it.

Second, prohibiting surveillance of political views is absolute in this bill. It does not except in four narrowly defined circumstances grant any discretion to the Department of Defense, and I think this is a very important distinction between the bill and DOD directive 5200.27, which does do that. This discretion would be inconsistent with the lack of military jurisdiction in the whole area.

Third, the prohibition is not limited to domestic activities. I don't think I need to say more about the German case as an example of the danger when it is not applied abroad.

Furthermore, the insurrection statutes and any arguable civil disturbance role that the military would have to play are inapplicable when you are talking about a foreign situation. The Army has no jurisdiction whatsoever to conduct foreign surveillance of American citizens. In fact, I would say any civil disturbances abroad are not properly within the scope of any American jurisdiction, to say nothing of the military, which is not to say that the military cannot secure its own installations abroad.

The exceptions to the bill we generally support. The first one is certainly acceptable insofar as the bill does not apply after the Army has publicly and actually assigned troops. I think the legislative history should clearly reflect that this does not mean the Army can suspend constitutional rights once it has been assigned to a particular area.

Second, the investigation of two types of criminal activities. The first one, on military installations, is acceptable. The second, crimes against property of the United States frankly puzzles me because I don't see why insofar as the property is military property and it is on a military installation, the first exception shouldn't cover it. Insofar as it isn't, I would suggest it is more in the realm of civilian law.

Senator ERVIN. Well, I think this was put in on account of the fact that sometimes you may have military property which is not on a military installation, and that is to give the military the right to investigate under those circumstances.

Mr. SHATTUCK. Well, insofar as protecting the military property where it is, whether or not on the installation, I suppose the exception is reasonable.

Third, defense facility employment screening is reasonable if it does not involve generalized surveillance in order to screen people before they apply for jobs. We have had experience in that regard with Daniel Schorr of CBS who was given a "pre-employment" check by the FBI, and any other examples of this kind with respect to military surveillance would be equally unacceptable.

Fourth, the state militia exception we find acceptable, but we would suggest that the legislative history or perhaps even a provision of the bill should clearly spell out that this does not authorize surveillance in any way. I think the bill throughout is verging on the possibility that what it excludes is otherwise acceptable. That this is not intended by Congress should be indicated somewhere in the bill.

Finally, with respect to the remedy section, Mr. Chairman, I would suggest one amendment to the language concerning persons who can bring suits. I think it is extremely important for the enforcement of the entire statutory scheme to permit these suits to go forward. But I wouldn't describe the person who has standing as an "aggrieved" person "threatened with injury," but under my theory——

Senator ERVIN. Your theory is, and I think it is sound if I understand it, that a person has a right not to be deprived of protection which the first and the fourth amendments give him, and all he should be required to show is he is about to be deprived of those protections. I think the Supreme Court in a number of cases has sustained that view. I think in the case of *NAACP* v. *Alabama*, the court said the State government had no right to demand a disclosure of the plaintiff's association. The court didn't say they had to be actually damaged or threatened with actual damage. I think that your point here, that these civil remedy provisions need some redrafting to reflect that viewpoint is well taken. The military ought not to have the power to invade my privacy and collect information concerning my beliefs or my associations or my political views or activities regardless of whether I suffer any actual damage from that at all, any kind of damage. Otherwise, the Constitution would be nullified.

Mr. SHATTUCK. I know the chairman presented that point very forcefully in the Supreme Court, and I wish we were more forceful on that theory. I think that is the theory that might have swung the Court in the other direction.

Senator ERVIN. They say that the fact that a lawyer disagrees with the decision of the court in a case in which he participates is no evidence of a lack of capacity on his part. I still believe about the Tatum case that what I said in my argument if the complainant in that case didn't state a cause of action, the Star-Spangled Banner lies when it says the United States is the land of the free.

Mr. SHATTUCK. I think that was more eloquently put—in fact I would say the same thing. Mr. Justice Douglas' opinion, which really concludes with a very powerful quotation which I would like to offer in completion of my testimony, said this case is a cancer on our body politic.

Senator ERVIN. Also, I thought the dissent of Justice Brennan put the real issue of that case in a very plain, lucid and succinct way. The majority of the court seemed to lose sight of the fact that under the rules of procedure the test of the sufficiency of the complaint was to be determined by the allegations of the complaint on their face.

I would be glad if you would study the civil provisions of this a little further and suggest any further language you think would present the ideas you have expressed and the ideas with which I agree, namely, that when the Army invades the precincts which are protected by the first amendment or the fourth amendment, all a litigant has to show to have standing is an invasion of these rights regardless of whether he suffers any actual injury whatsoever.

Mr. SHATTUCK. I did have a question about the second civil provision. I wasn't sure whether I agreed or disagreed with it. If I disagree it is only because it allows class actions to be brought by any person——

Senator ERVIN. I agree that it is too broad.

Mr. SHATTUCK. My concern about that, to be honest with you, Mr. Chairman, is that there would be a stream of people who would be in my office and other people's offices. On the other hand, class actions are always consolidated, so maybe I am not opposed to it.

[The statement of Mr. John H. F. Shattuck follows:]

PREPARED STATEMENT OF JOHN H. F. SHATTUCK, NATIONAL STAFF COUNSEL, AMERICAN CIVIL LIBERTIES UNION

The American Civil Liberties Union is a nationwide, nonpartisan organization of more than 275,000 members devoted to protection of the Bill of Rights. We strongly endorse S. 2318 as a firm prohibition of a government activity which in recent years has posed serious threats to constitutional freedom—the surveillance of citizens by the military. Before discussing the specific features of S. 2318, I would like to offer some comments about certain military surveillance practices with which I am familiar as a result of four lawsuits brought by the American Civil Liberties Union on behalf of civilian individuals and organizations who have been targeted by the military for surveillance. I would then like to make some general observations about the constitutional interests that S. 2318 would protect against military surveillance.

I. LITIGATION INVOLVING MILITARY SURVEILLANCE

Surveillance by the Army of civilian activities first came to light in January 1970 when Christopher H. Pyle, a former Army captain and instructor in the Army Intelligence School at Fort Holabird, Maryland, published an article on the subject in the *Washington Monthly*. As the Subcommittee is aware, there followed a prolonged period of administrative reaction within the Army, congressional investigation and private litigation, during which certain basic facts emerged about the scope of the Army's civilian intelligence-gathering system.

A. The Tatum Challenge

In *Laird* v. *Tatum*, 408 U.S. 1 (1972), the only lawsuit to reach the Supreme Court, following these initial disclosures, the ACLU summarized as follows the facts about this system as we then knew them:

"Plaintiffs allege and the government does not deny: (1) that the Army has stationed intelligence agents in more than three hundred domestic intelligence units throughout the United States; (2) that these agents have intruded themselves into civilian politics by monitoring, reporting and interpreting the political and often private activities and associations of civilians; (3) that the Army Intelligence Command maintains an underdetermined number of computerized and non-computerized data banks on political protests occurring any place in the United States; (4) information on civilian political protests collected by the Army Intelligence Command has been widely and indiscriminately disseminated to military and civilian agencies of government; (5) that the Army Intelligence Command has compiled an identification Blacklist including photographs of civilians "who might cause trouble for the Army"; and (6) that Army intelligence agents have infiltrated civilian political organizations and used improper methods to acquire confidential information about private persons. [Brief for Respondents, *Laird* v. *Tatum*, at 10–11]."

The allegations in *Tatum* were necessarily generalized. The complaint was filed in February 1970, nearly a year before this Subcommittee's comprehensive hearings on surveillance and databanks brought to light the detailed facts about Army surveillance [*Federal Databanks, Computers and the Bill of Rights*, Hearings Before Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, 92nd Cong., 1st Sess., February and March 1971]. Nevertheless, the plaintiffs, all political activisits and organizations,[1] felt their rights were sufficiently jeopardized by the Army's on-going surveillance program to warrant immediate court action, and their ACLU attorneys believed that the lawsuit itself would provide a vehicle for discovering the full impact of the surveillance system on civilian politics. At the time the suit was filed it was known that most, if not all, of the plaintiffs were the subjects of Army intelligence dossiers maintained at Fort Holabird, Maryland. I have appended to my statement a copy of Exhibit A to the Complaint, an Army Intelligence Command "Weekly Intelligence Summary" for the week of March 11–18, 1968, which describes the political activities of many of the plaintiffs and is typical of the information which was inserted by the Army into their files.

The *Tatum* plaintiffs went into court seeking declaratory and injunctive relief against the Army, including an order destroying the file information collected about them and a declaration that the Army's activities were beyond the scope of any constitutional or statutory authority. The plaintiffs charged that "[t]he purpose and effect" of the surveillance program "is to harass and intimidate [them] and others similarly situated and to deter them from exercising their rights of political expression, protest and dissent from government policies, which are protected by the First Amendment, by invading their privacy, damaging their reputations, and adversely affecting their employment and their opportunities for employment" [Complaint, ¶ 15]. The plaintiffs claimed that they were deterred from exercising their political rights for "fear that they will be made subjects of reports in the Army's intelligence network, that permanent reports of their activities will be maintained by the Army, that their profiles will appear in the so-called 'Blacklist' and that all this information will be released to numerous federal and state agencies upon request" [*Id.*, ¶ 16].

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[1] Arlo Tatum (Executive Secretary of the Central Committee for Conscientious Objectors); Women's Strike for Peace; War Resisters' League; American Federation of State, County & Municipal Employees; Conrad Lynn and Benjamin N. Wyatt, Jr. (black attorneys); Clergy and Laymen Concerned About the War in Vietnam; Veterans for Peace in Vietnam; the Vietnam Moratorium Committee; the Vietnam Week Committee of the University of Pennsylvania; Rev. Albert Cleage, Jr. (Detroit Clergyman); the Vietnam Education Group; and Chicago Area Women for Peace.

Unfortunately, the reception which the plaintiffs received in the District Court was almost as chilling as their treatment by Army intelligence. Comparing the Army's surveillance apparatus to a newspaper clipping service, the district judge scoffed at the rejoinder by plaintiffs' counsel that "newspapers don't have guns and jails" [Transcript of Proceedings, April 22, 1970, at ——]. The Court refused to grant the plaintiffs an evidentiary hearing—thus barring the testimony of several former Army intelligence agents who were to testify before this Subcommittee ten months later[2]—and denied their motion for a preliminary injunction, dismissing their complaint.

This decision was reversed on appeal on April 27, 1971, and the case was remanded for a full evidentiary hearing [444 F.2d 947 (D.C. Cir. 1971)]. The Court of Appeals held, in an opinion by Judge Wilkey, that the complaint stated a justiciable cause of action involving First and Fourth Amendment questions and instructed the District Court to determine:

"1. The nature of the Army's domestic intelligence system * * *, specifically the extent of the system, the methods of gathering information, its content and substance, the methods of retention and distribution, and the recipients of the information.

"2. What part, if any, of the Army domestic intelligence gathering system is unrelated to or not reasonably necessary to the performance of the mission as defined by the Constitution, statutes, and military regulations * * *.

"3. Whether the existence of any overbroad aspects of the intelligence gathering system * * * has or might have an inhibiting effect on appellants or others similarly situated.

"4. Such relief as called for in accordance with the above established law and facts [444 F.2d at 958–59]."

The remand hearing never took place, however, because the Army's petition for certiorari was granted, and the Supreme Court reversed the Court of Appeals decision by a narrow 5–4 majority. Writing for the majority, Chief Justice Burger implicitly indicated that the case involved issues not amenable to judicial resolution but more appropriate for legislative action. The majority view that the *Tatum* complaint was not justiciable apparently was based on the fact that the plaintiffs were broadly challenging "the existence and operation of the [Army's nationwide] intelligence gathering system" [408 U.S. at 3]. Reviewing prior decisions striking down governmental practices which inhibited the exercise of First Amendment rights, the Chief Justice concluded that in each of those cases relief was granted to particular individuals who were the direct targets of the challenged practice. To the extent that there were such persons among the plaintiffs in *Tatum*, however, the Court found that they were "indistinguishable from the public at large", although all four dissenters (Stewart, Marshall, Douglas and Brennan, J.J.) pointed out that this was a clear misreading of the record and that the plaintiffs should have been given a chance to prove their case at a trial [408 U.S. at 165–78].

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[2] Plaintiffs proffered the testimony of former Army Intelligence officers Ralph Stein, Oliver Peirce and Christopher Pyle. The Stein and Pyle testimony, as well as that of former agents Joseph Levin, Jr., Edward Sohier, John O'Brien and Lawrence Lane was presented in full in this Subcommittee's 1971 hearings. Although it need not be summarized here, this testimony bears directly on the need to enact S. 2318 [See 1971 Hearings, at 41 ff., 100 ff., 147 ff., 244 ff., 277 ff., 298 ff.].

The *Tatum* decision undoubtedly stands as one of the most controversial actions of the Burger Court.[3] Without dwelling upon the tenuous and often confused reasoning of the majority opinion [see, e.g. Note, *Big Brother Wears Army Green*, 72 COLUM. L. REV. 1009 (1972)], it is only necessary to point out that the decision did not vindicate the Army's claims that what it had been doing was legal but merely held that a generalized challenge on behalf of a nationwide class of civilians was judicially unmanageable. The Court's concluding language implies that Congress is better equipped to provide a remedy to the problem: "there is nothing in our Nation's history or in this Court's decided cases, including our holding today, that can properly be seen as giving any indication that actual or threatened injury by reason of unlawful activities of the military would go unnoticed or unremedied" [408 U.S. at 165].

B. Litigation After Laird v. *Tatum.*

Another case challenging the Army's CONUS Intelligence operation was litigated in the shadow of *Tatum*, and was ultimately dismissed on the basis of the Supreme Court's decision of June 26, 1972. *American Civil Liberties Union* v. *Westmoreland*, 323 F. Supp. 1153 (N.D. Ill. 1971), *aff'd sub nom. American Civil Liberties Union* v. *Laird*, 463 F.2d 499, petition for *rehearing denied*, 463 F.2d 503 (7th Cir.), *cert. denied*, 409 U.S. 1116 (1972). Nevertheless, there are several aspects of this case which are worth noting as further evidence of the need for the prohibition in S. 2318 and the appropriateness of legislative action on military surveillance.

ACLU v. *Westmoreland* was a class action brought by politically active citizens in the Chicago area[4] against the 113th Military Intelligence Group, a Chicago-based unit of CONUS Intelligence, and its Army command structure. Filed on the eve of this subcommittee's hearings and the rising public concern about military spying, the suit reached a five-day evidentiary hearing in the District Court on plaintiffs' motion for a preliminary injunction in early January 1971. The testimony at the hearing was set forth in detail for the subcommittee in its 1971 Hearings (at pp. 91 ff.) by Alexander Polikoff, the plaintiffs' trial attorney. It was summarized as follows in our petition to the Supreme Court for certiorari:

"The testimony at the hearing was directed to showing the organization, scope and operation of the Army's domestic intelligence program and its impact on plaintiffs. It was shown that the Army's intelligence activities were divided into seven military intelligence groups covering the entire United States, and that a 'left-wing desk' was maintained by the Assistant Chief of Staff for Intelligence with responsibility for obtaining information on such matters as the financial background, political activities and sexual conduct of persons connected with 'left-wing' and 'anti-war' groups. This information was obtained by both overt and covert methods and placed in computerized depositories for easy reference.

"As part of this operation, the 113th Military Intelligence Group maintained dossiers on virtually every organization in the Chicago area. In addition, files were maintained on any person whom the Army 'had reason to believe was in a leadership position in a group that was or could be or reasonably expected to be involved in civil disturbance.' Pursuant to these criteria, a dossier was maintained on each of the plaintiffs. Undercover agents were employed, newspapers were combed, and reports were received from federal, state and local investigative agencies. The resulting files 'contained all details on a person's file, background and history.' Notwithstanding repeated assertions by the witnesses for the defendants that the surveillance program was substantially reduced in scope, it was conceded that files were still retained on plaintiffs Sherman and Raynor.

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[3] Perhaps the most controversial aspect of the decision was the fact that Mr. Justice Rehnquist cast the deciding vote, notwithstanding his testimony before this very subcommittee, as a Nixon Administration witness prior to his nomination to the Court, that the issues in *Tatum* were nonjusticiable. See 1971 Hearings, at 597; 849. Moreover, as an Assistant Attorney General for the Office of Legal Counsel, Rehnquist was the custodian of the evidence which the Court of Appeals held was discoverable by the plaintiffs. Since Justice Rehnquist had been expected to disqualify himself from participating in the *Tatum* decision (and since the result would have been different had he done so), the plaintiffs moved to recuse him *nunc pro tunc* after the case was decided. He denied their motion, but conceded its "seriousness", on October 11, 1972 [41 U.S.L.W. 3208].

[4] The complaint was brought on behalf of the American Civil Liberties Union and Jay Miller, its Executive Director; Jessie Jackson, the Executive Director of Operation Breadbasket; Alderman A. A. Raynor of Chicago; Gordon Sherman, President of the Business Executives Move for Vietnam Peace and Henry DeZutter, a Chicago journalist.

"Plaintiffs Miller, Sherman and Jackson testified to the direct effect of the Army's activities on them and their organizations. Each of them stated that the effect of surveillance was both personally inhibiting and interfered with the work of their organizations by deterring public participation and support. The result was that effective communication of ideas was significantly impeded."

At the conclusion of the hearing the trial judge denied the motion for a preliminary injunction and dismissed the complaint. In a sarcastic opinion he rejected the plaintiffs' testimony about the burden and inhibition on their free speech and political activities produced by the Army's surveillance, and found that the surveillance in any event had been reduced. The judge's sarcasm, however, was by no means limited to the plaintiffs: "This evidence indicates that typical, gigantic Washington bureaucratic boondoggle. . . . [T]here has been a tremendous waste of the taxpayers' money in hiring people to perform the duties that were performed as revealed by the evidence in this case . . ." [323 F. Supp. at 1154].

The Seventh Circuit Court of Appeals was more inclined to substance than sarcasm. The Court was disturbed by the evidence but did not feel that it could reach the merits because the Supreme Court had already granted certiorari in *Tatum*. Nevertheless, the Court did not hesitate to point out, based in part upon the evidence before it that:

"[W]e assume, without deciding, that a 'massive' domestic intelligence operation conducted by the United States Army can have a sufficient deterrent effect on the free expression of political ideas to give individual citizens affected thereby standing to challenge the legitimacy of such an operation * * *.

"[W]e assume, without deciding, that the domestic intelligence activities as conducted by the Army prior to June 7, 1970, were illegitimate, and that the excesses could be excised by judicial decree [463 F.2d at 500]."

The *Tatum* and *Westmoreland* decisions were based in part on indications that the Army had ceased its surveillance operations by the time the cases were on appeal, thus introducing the question of possible mootness. The testimony and documentary evidence in the record of this Subcommittee's 1971 Hearings, and the Committee reports based on those Hearings, are not entirely clear on this issue, but it is certainly true that the CONUS Intelligence operation in existence at the time the *Tatum* complaint was filed was at least considerably reduced by the time the case reached the Supreme Court. It does not seem unreasonable to suggest that this reduction was not voluntary, but resulted from pressures brought by Congress, by the litigation and by public exposure.

Before discussing S. 2318 and some of the constitutional questions involved, I would like to set forth some recent evidence that military surveillance of civilians is continuing.

The first evidence comes from a lawsuit that was filed prior to *Tatum*, but involves related issues and was stayed while *Tatum* was pending on appeal. In *People Against Racism* v. *Laird*, Civil Action No. 3565-69 (D.D.C.), a group of anti-war demonstrators had boarded a bus in Washington, D.C. to go to a demonstration in Wilmington, Delaware on January 21, 1969. Their bus was detained for more than an hour by persons identified by bus company personnel as "military intelligence agents." It was subsequently determined through litigation that the agents were plainclothes field operatives of the 116th Military Intelligence Group; that they conferred at length with bus company officials and with their own headquarters by telephone; that a substitute bus driver, also suspected of being a military intelligence agent, was selected to drive the plaintiffs to their destination; and that file information was collected and indexed under the names of several of the plaintiffs in the Army's databank at Fort Holabird.

What is particularly significant about these facts, all of which were admitted (except the identity of the substitute driver) in the Army's Answer to the Amended Complaint filed on November 12, 1973, is that the

Army continues to maintain files on three of the six individual plaintiffs and "an index card in the Defense Central Index of Investigation on an organization, People Against Racism * * *" [Answer, ¶ 23]. The Army claims, "on information and belief, [that] the files to which that card [on the organization] relates were purged and destroyed," but it makes no similar claim with respect to files on the individual plaintiffs [*Id.*]. The Army has withdrawn a motion for judgment on the pleadings and the case is now proceeding through discovery. [Copies of the Amended Complaint and Answer in *People Against Racism* v. *Laird* are submitted for the record.]

The last case I would like to discuss involves substantial new evidence that military surveillance of civilians is continuing. *Berlin Democratic Club, et al.* v. *Schlesinger, et al.*, Civil Action No. 310–74 (D.D.C.) is an action for declaratory and injunctive relief and damages, brought by sixteen American civilians and two American organizations in West Germany who have been the targets of intensive surveillance by the Army during at least the last two years. I am the attorney of record in the case.

The *BDC* complaint, which was filed on February 19, 1974, alleges four broad categories of intrusive surveillance: (1) wiretapping; (2) infiltration of organizations and private meetings; (3) blacklisting and political intelligence gathering; and (4) opening of private, civilian mail. Most of the specific allegations in these broad categories are supported by documentary evidence. Much of this evidence was supplied to the plaintiffs and released to the public by Army intelligence agents, who, like the agents testifying before this subcommittee in 1971, knew that what they had been commanded to do was illegal and unconstitutional, and acted out of a sense of public duty in making their disclosures.

The evidence indicates that the Army's attention has focussed particularly on American civilians in Berlin and in the Heidelberg area. Among the former are a group of citizens who worked in the presidential campaign of Senator George McGovern, and following the 1972 election continued to work in support of the platform adopted at the 1972 Democratic National Convention. In early 1973 the group was formally chartered as an affiliate of the Democratic National Committee under the name, "Berlin Democratic Club". The evidence reveals that starting sometime after August 1972 agents of the 66th Military Intelligence Group in Berlin began to infiltrate the organization and file detailed reports on its activities. One such report indicates that the group adopted the Bill of Rights as its Constitution and that it did not seem to be inclined toward "subversive activities". Nevertheless, the group was branded "CS", or "countersubversive"—the label which the Army attached to the reports, under which they were filed.

Details about the personal lives of BDC members were recorded, including their marital status and attitude toward their work (many of them are students or faculty members at the Free University in Berlin). More important, however, is the fact that their political views were exhaustively reported and analyzed, in an often sophomoric attempt to determine their "aims" and predict their actions. Apparently, much of this information was collected through "intercepts", both of mail and of telephone conversations. For example in June 1973 BDC collected 330 names on a petition urging the initiation of impeachment proceedings against President Nixon, and the petition was "intercepted" and photographed after it was put in the mail to House Speaker Carl Albert.[5]

Another target of military spying in Germany is a group of civilian attorneys who regularly provide counsel to servicemen in court martial proceedings and other military cases. Conversations among lawyers working for the Lawyers' Military Defense Committee and their clients were intercepted on at least one wiretap installed on the phone of one of the plaintiffs, Mary-Jo Van Ingen Leibowitz, who is an American free lance journalist and consultant to LMDC. Conversations overheard on the wiretap, as revealed by Army documents summarizing them, include discussions about how to conduct the court martial defense of one of the plaintiffs, Larry Johnson a black GI who has since been discharged from the Army. According to the Army intelligence agents who disclosed the wiretapping, more than fifteen volumes of classified surveillance documents, including the records of other wiretaps on LMDC lawyers, were destroyed by the Army immediately after the disclosures occurred last August, thus further indicating that the Army knew the entire operation was illegal.[6]

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[5] Among the various activities of BDC which were reported in detail in intelligence briefing papers for Maj. Gen. Harold Aaron, then the Deputy Chief of Staff for Intelligence, U.S. Army Europe and now the Army's top intelligence officer in the Pentagon, were: (1) the receipt of an autographed picture from Senator George McGovern; (2) the sponsoring of a conference on "GI Rights and American Civil Liberties" in Feb. 1973; (3) contacts between BDC members and various "underground newspaper"; (4) contacts between BDC and LMDC lawyers; and (5) the sponsoring of a conference in June 1973 on "Watergate—Its Meaning and Significance."

The action last week of a military judge presiding over a court martial in Naples, Italy gives an additional indication of the extent of military surveillance over civilian American attorneys in Europe. On Thursday, April 3, 1974. Commander L. T. Mirtchung, U.S.N., granted a defense motion in *United States* v. *Crowder, et al.*[7] for the disclosure of all wiretap surveillance of the eleven military defendants (Naval personnel serving on the U.S.S. *Little Rock*) and their LMDC lawyers. The order covers the period January 29, 1974 (when the lawyers first came into the case) to the present, and requires the Army to search its files and produce whatever surveillance documents are found so that the defendants can conduct a "taint hearing". It is not known whether or not to what extent the Army will attempt to comply with the order.

Other targets of the Army's wiretapping and infiltration were American clergymen residing at the Goessner Industrial Mission in Mainz and underground newspapers and their American staffs. The Goessner Mission is a Protestant organization jointly sponsored by the National Council of Churches (U.S.), the World Council of Churches and the German Evangelische Kirche. Two of its residents, Rev. David McCreary and Rev. James Stillman are the subjects of several 66th Military Intelligence Group surveillance reports and are plaintiffs in the BDC suit. The American underground newspapers which have been kept under surveillance include *Forward*, published in Berlin, and *Fight Back*, published in Heidelberg. The intensity of this surveillance is demonstrated by one classified document from the Army's files: a photostatic copy of a letter to the staff of *Forward* from the Librarian of the College of Charleston, South Carolina, ordering a subscription and requesting back copies of the newspaper for the college library.

All of this surveillance was conducted with an immediate and palpable effect on the lives of the plaintiffs. Apart from the fear and dissension which it created among the moderate activists of the Berlin Democratic Club, and the inhibitions which it injected into the relationship of LMDC lawyers with their clients, it also caused two of the BDC plaintiffs to lose their jobs and a third to be threatened with deportation. Jay Brady and David Harris, both members of BDC, were fired from their positions at the American Exhibit in the Berlin Industries Fair on October 31, 1973, for what the Director of the Exhibit later told other employees were "political reasons." Both Brady and Harris had worked for *Forward*, but their names never appeared in any issue and they could not have been linked to the newspaper except through surveillance.[8] Another plaintiff, Karen Bixler, a staff writer for Fight Back, was threatened with deportation from Germany in September 1973, based upon the recommendation of the Office of the Chief of Staff for Intelligence, U.S. Army, Europe, which provided a "fact sheet" on her activities to the German authorities. She was subsequently permitted to remain in Germany when the German government determined not to pursue her case after her marriage to a German citizen.

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[6] It should be noted that the Army dropped its charges against Spec. 4 John McDougal, one of the Army intelligence agents who made the "unauthorized disclosures", after McDougal's lawyer gave notice that he intended to base his defense on the illegality and unconstitutionality of the surveillance. An even more telling admission by the Army that its surveillance program could not be defended in Court was the rescission of Eighth Army Regulation 381–25 ("Military Intelligence Counterdissidence Program") in early August 1973, immediately after the first reports about the wiretapping and infiltration began to appear in the press, and little more than a week after the Regulation was promulgated on July 23. The Regulation defined "dissidence" as "manifestation of a rejection of military, political or social standards," and authorized military intelligence agents to collect information about civilian or military "dissidence" by a variety of covert means.

[7] Special Court Martial, Naval Support Activity, Naples, Italy (Capt. P. K. Cullins, Convening Authority).

[8] It should be noted that this is precisely the kind of "injury" found lacking by the Supreme Court majority in *Laird* v. *Tatum*, *supra*.

"[The Army's] own documents suggest that it was trying to establish the existence of a conspiracy to subvert army enlisted men, linking the Methodist missionaries, the LMDC lawyers, the Berlin Democrats, underground news papers, foreign Communist parties and antiwar activists. But in the case of the Berlin Democrats the surveillance continued months after it was clear that the organization was legitimate in its aims and its methods. And indeed, the briefing for Gen. Aaron noted that "during the meeting of Feb. 24 [of Concerned Americans in Berlin], there was no particular attempt to meet the GIs or solicit their support. At one point, a sheet was passed around so that a mailing list could be started. Most of the GIs, however, refrained from signing.

"The army's own secret agents were of course exceptions to this GI apathy. Since they were recruited from the Berlin garrison, it is reasonable to assume that GIs soon got the message that army intelligence was keeping an eye on the Berlin Democrats, and that it was unhealthy to join them."

Whatever was the original purpose of the Army's operation, what we already know about it indicates that in practice it has swallowed up all purpose and trampled on the rights of American civilians abroad.[9] [Copies of the First Amended Complaint and Exhibits A through O in *Berlin Democratic Club, et al.* v. *Schlesinger, et al.*, Civil Action No. 310-74 (D.D.C.) are submitted for the record].

II. MILITARY SURVEILLANCE AND THE CONSTITUTION

There are two separate but related aspects to the unconstitutionality of military surveillance. First, the surveillance program, regardless of its origin, infringes on individual rights. Second, the fact that the *military* is conducting the surveillance enhances its unconstitutionality, because civilians are historically protected from military intrusions of any kind.

That none of the courts which have addressed the issue have yet reached the merits of a challenge to Army surveillance does not weaken these constitutional arguments. On the contrary, because the Supreme Court majority indicated in *Laird* v. *Tatum* that it would be difficult to frame a judicially manageable citizens' claim for relief from military surveillance, the constitutional arguments are particularly appropriate in considering S. 2318 as a legislative solution to a problem the courts have not been able to solve.

A. Invasion of Constitutional Rights

1. *Freedom of Speech and Association.*—The impact of governmental surveillance on First Amendment freedoms is severe. When the price of engaging in a controversial political activity—or any other form of protected speech or association—is compulsory disclosure to government agents of all the details about that activity, the price is too high to pay. As the Supreme Court has repeatedly pointed out, First Amendment freedoms can be quickly extinguished if they are not given the "breathing space" they need to survive. See, e.g., *NAACP* v. *Button*, 371 U.S. 415, 432-33 (1963).

Surveillance, however, need not demonstrably inhibit First Amendment rights to have a serious impact on their exercise. The interception and recording of information about a person's political views and associations cuts to the core of the associational privacy that the First Amendment was intended to protect, regardless of whether it has a "chilling effect" on protected activities. So strongly rooted are the traditions of privacy in one's political beliefs and associations that even the debates over the adoption of the Constitution were carried out anonymously in the Federalist and Anti-Federalist papers. Beveridge, 4 *Life of Marshall* (1919), at pp. 313-19.

The right of privacy in the sphere of controversial associations was most forcefully recognized by a unanimous Supreme Court in *NAACP* v. *Alabama*, 357 U.S. 449 (1958). In connection with an attempt to enjoin the NAACP from operating in Alabama, the Alabama Attorney General sought disclosure of its local membership list. Mr. Justice Harlan, writing for the Court, ruled that Alabama could not constitutionally compel disclosure of the list:

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[9] The Supreme Court has long held that American citizens do not lose their protection by the Constitution against illegal actions of their own government when they travel abroad. *Reid* v. *Covert*, 354 U.S. 1 5–6 (1956) ("We reject the idea that when the United States acts against citizens abroad it can do so free of the Bill of Rights."). See also *Kent* v. *Dulles*, 357 U.S. 116 (1957) ; *Lynd* v. *Rusk*, 389 F. 2d 940 (D.C. Cir. 1967).

"This Court has recognized the vital relationship between freedom to associate and privacy of one's associations. * * * Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs [357 U.S. at 462]."

Repeatedly over the last decade and a half the Supreme Court has reaffirmed and extended the protection of associational privacy from government intrusion. See, e.g., *Bates* v. *Little Rock*, 361 U.S. 516 (1960) (barring compulsory disclosure of NAACP membership and contributor lists); *Talley* v. *California*, 362 U.S. 60 (1960) (striking down ordinance prohibiting circulation of anonymous handbills); *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U.S. 293 (1961) (striking down statute requiring state registration of members in nonprofit organizations); *Lamont* v. *Postmaster General*, 381 U.S. 301 (1965) (striking down statute requiring addressee of "communist political propaganda" to identify himself by requesting delivery); *Pollard v. Roberts*, 283 F. Supp. 248 (E.D. Ark.) (three-judge court), *aff'd. per curiam*, 393 U.S. 14 (1968) (quashing subpœna of bank records of Arkansas Republican Party).

From these decisions the following principles emerge. First, when a protected First Amendment activity is involved, the government may not intrude upon that activity and compel the participants to identify themselves and their beliefs as a necessary condition of exercising their rights of speech and association. See, e.g., *Thomas v. Collins*, 323 U.S. 516, 540 (1945) ("a requirement that one must register before he undertakes to make a . . . speech to enlist support for a lawful movement is quite incompatible with the requirement of the First Amendment") Second, even if some part of the activity is ***not*** protected by the First Amendment, the protected participants do not lose their right to associational privacy and the government cannot collect and extract information about all the participants. See, e.g., *Shelton v. Tucker*, 364 U.S. 479, 488 (1960) ("even . . . a legitimate governmental purpose . . . cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved"). See generally Note, *The Constitutional Right to Anonymity: Free Speech, Disclosure and the Devil*, 70 Yale L. J. 1084 (1961).

To the extent that the Supreme Court in *Laird v. Tatum* declined to recognize the invasion of associational privacy and political anonymity by the Army's surveillance program, therefore, and insisted that the plaintiffs had to prove an *additional* injury (such as the loss of a job), I respectfully suggest that the majority misconceived the nature of the First Amendment issue in the case.

Judicial scrutiny of government surveillance in areas touching upon First Amendment rights is well established. When the police are not gathering evidence of a specific crime but are conducting intrusive and generalized surveillance, lower federal courts have not hesitated to enjoin the intrusion if it affects speech or association. In *Bee See Books, Inc. v. Leary*, 291 F. Supp. 622, 627 (S.D.N.Y. 1968), for example, the district court enjoined the New York City Police Commissioner from stationing policemen in bookstores where "the circumstances indicate[d] that surveillance was initiated for the purpose of inhibiting the distribution of material by the plaintiffs rather than to detect and gather evidence in violation of the New York obscenity statute." Similarly, the mere presence of police at private labor union meetings was enjoined by an Indiana federal court in *Furniture Workers Local 309* v. *Gates*, 75 F. Supp. 620 (N.D. Ind. 1948).[10]

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[10] Many civil rights cases challenging various forms of governmental surveillance of First Amendment activities have recently been held to be justiciable despite the decision in *Laird* v. *Tatum*. See, e.g., *Yaffe* v. *Powers*, 454 F. 2d 1362 (1st Cir. 1972), reversing 71–514–J (D. Mass. June 13, 1971), and remanding for class action determination and discovery proceedings; *Kenyatta* v. *Kelley*, —— F.R.D. ——, Civil Action No. 71–2595 (E.D. Pa. March 29, 1974) (ordering discovery); *Jabara* v. *Kelley*, —— F.R.D. ——, Civil Action No. 09865 (E.D. Mich. March 18, 1974) (ordering discovery); *Handschu* v. *Special Services Division*, 349 F. Supp. 766 (S.D.N.Y. 1972) (denying motion to dismiss); *Bach* v. *Mitchell*, —— F. Supp. —— (W.D. Wis. January 14, 1973) (denying motion to dismiss); *Kent State V.V.A.W.* v. *Fyke* Civil Action No. C72–1271 (N.D. Ohio July 13, 1973) (denying motion to dismiss); *Philadelphia Yearly Meeting* v. *Tate*, 71 Civ. 849 (E.D. Pa. July 14, 1972) (denying motion to dismiss); *Philadelphia Resistance* v. *Mitchell*, 58 F.R.D. 139 (E.D. Pa. 1972) (ordering discovery on extent of undercover surveillance of political activists); *Holmes* v. *Church* 70 Civ. 5691 (S.D.N.Y. June 14, 1971) (order enjoining police surveillance of political activists "neither suspected of nor engaged in criminal activity"); Cf. *Anderson* v. *Kugler*, 56 N.J. 210, 265 A. 2d. 278 (1970), reversing 106 N.J. 545 (Ch. Div. 1969), and remanding for an evidentiary hearing.

2. *Right to Privacy and Freedom From Unreasonable Searches and Seizures.*—The military surveillance practices that have been revealed over the last four years are reminiscent of the infamous British writs assistance, in reaction to which the Fourth Amendment was adopted. The writs were general warrants under which "officers of the Crown were given roving commissions to search where they pleased in order to suppress and destroy the literature of dissent. . . ." *Stanford* v. *Texas*, 379 U.S. 476, 481–82 (1965). The general, warrantless searches conducted by military intelligence agents are aimed at determining and recording the ideas and beliefs of American civilians. It is precisely in these circumstances—where dissenting ideas are the objects of a search, not contraband or other evidence of a crime—that the protections of the Fourth Amendment are most important.

Four months before its decision in *Laird* v. *Tatum*, the Supreme Court held that the Fourth Amendment's requirements cannot be selectively disregarded in the interests of national security, particularly when the object of a search is speech. *United States* v. *United States District Court*, 407 U.S. 297 (1972). Writing for the unanimous Court, Mr. Justice Powell explained why:

"Though physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed, its broader spirit now shields private speech from unreasonable surveillance * * *. Fourth Amendment protections become the more necessary when the targets of official surveillance may be those suspected of unorthodoxy in their political beliefs * * *. The price of lawful public dissent must not be a dread of subjection to an unchecked surveillance power. 32 L. Ed. 2d, at 764."

The constitutional right to privacy covers a multitude of areas where the individual has a "reasonable expectation of privacy," e.g., *Katz* v. *United States*, *supra* (telephone booth); *Griswold* v. *Connecticut*, 381 U.S. 479 (1965) (marital relations); *Pollak* v. *Public Utilities*, 343 U.S. 451 (1952) (public bus); *Roe* v. *Wade*, 410 U.S. 113 (1973) (abortion). Federal courts in recent years have held that public or private spying on an individual's private activities gives rise to a cause of action for damages and injunctive relief.

In *York* v. *Story*, 324 F.2d. 450 (9th Cir. 1963), *cert. denied*, 376 U.S. 939 (1964), for example, a woman collected damages against the police in a civil rights action for violating her right to privacy when a policeman induced her to submit to intrusive photography by claiming that it was necessary to substantiate an assault and battery complaint she wished to file. Pointing out that "[a] search of one's home has been established to be an invasion of one's privacy against intrusion by the police," the court upheld the plaintiff's claim that her privacy had been invaded, even though the events in question occurred not in her home but in the police station. pointing out that:

"It has already been declared by the Supreme Court that the security of one's privacy against arbitrary intrusion by the police is basic to a free society and is therefore 'implicit in the concept of ordered liberty' embraced within the Due Process Clause of the Fourteenth Amendment. 324 F.2d at 455."

Under a variety of circumstances similar to those in *York*, most state jurisdictions have also recognized a common law cause of action for the invasion of privacy, particularly where personal information not in the public domain has been acquired surreptitiously. See generally 14 A.L.R. 2d 750 and 13 A.L.R. 3rd 1025.

The arrest record expungement cases further demonstrate that the collection and recording of derogatory personal information for surveillance purposes is an invasion of privacy. These cases recognize that the government must justify by some important public need the retention and/or distribution of information on persons who were arrested but not convicted of crimes. In *Morrow* v. *District of Columbia*, 417 F.2d 728, 742 (D.C. Cir. 1969), the court commented that it was an "unjustified invasion of privacy" for police to disseminate information about innocent persons who had been arrested. In *Wheeler* v. *Goodman*, 306 F. Supp. 58 (W.D.N.C. 1969) (three-judge court), the records of persons arrested for engaging in constitutionally protected activity were ordered expunged. See also *United States* v. *Kalish*, 271 F. Supp. 968, 970 (D.P.R. 1967). Similarly, in *Menard* v. *Mitchell*, 328 F Supp. 718, 725 (D.D.C. 1971), on remand from 430 F.2d 486 (D.C. Cir. 1970), Judge Gesell noted the disturbing growth of intelligence databanks and their impact on privacy:

"The increasing complexity of our society and technological advances which facilitate massive accumulation and ready regurgitation of far-flung data have presented more problems in this area, certainly problems not contemplated by the framers of the Constitution. These developments emphasize a pressing need to preserve and to redefine aspects of the right of privacy to insure the basic freedoms guaranteed by this democracy."

In the final analysis, however, it is not merely the privacy of citizens which is diminished by military surveillance, but rather their whole range of constitutional protections against intrusive and manipulative government action. Justice Douglas summed up the constitutional infirmities of the Army's surveillance apparatus in a strong dissenting opinion in *Laird* v. *Tatum* which concluded as follows:

"This case is a cancer on our body politic. It is a measure of the disease which afflicts us * * *. The Constitution was designed to keep government off the back of the people. The Bill of Rights was added to keep the precincts of belief and expression, of the press, of political and social activities free from surveillance * * *. The aim was to allow men to be free and independent and to assert their rights against government. There can be no influence more paralyzing of that objective than Army surveillance * * *. [408 U.S., at 171-72]."

B. Lack of Constitutional or Statutory Authority in the Military to Conduct surveillance of Civilians.

The second reason why military surveillance is illegal is that it is wholly lacking in constitutional or statutory authority. Even if the military were able to demonstrate an overwhelming governmental interest in its surveillance program, and the unavailability of any less drastic means to accomplish its purposes, the program would still be illegal.

The Constitution expressly assigns the power to Congress to define the role of the military in civilian affairs.[11] The military, therefore, is strictly limited to whatever civilian roles are given to it by statute, and the courts are charged with the duty to review any exercise by the military of this statutory authority. *O'Callahan* v. *Parker*, 395 U.S. 258 (1969); *Toth* v. *Quarles*. 350 U.S. 11 (1955); *Ex Parte Milligan*, 71 U.S. (4 Wall.) 2 (1866). Because constitutional rights are at stake when the military acts in the civilian area, the Supreme Court has long held that any civil authority granted to the military must be strictly construed:

"It is an unbending rule of law, that the exercise of military power, where the rights of citizens are concerned, shall never be pushed beyond what the exigency requires. *Raymond* v. *Thomas*, 91 U.S. 712, 716 (1875)."

The statutory authority on which the Army claims to have been relying in conducting domestic surveillance is contained in 10 U.S.C. sections 331-334. These sections provide for the domestic use of the armed forces by the President "to enforce the laws of the United States" or "suppress insurrection" when it becomes impossible for local and state authorities to enforce the laws "by the ordinary course of judicial proceedings." See *Alabama* v. *United States*, 373 U.S. 545 (1963); *Presser* v. *Illinois*, 116 U.S. 252 (1886); *In Re Charge to the Grand Jury*, 62 F. 828 (D. Ill. 1894). The statutes empower the military to act only after a particular insurrection has grown beyond the capabilities of the civilian police,[12] or when the civilian police have refused to enforce the federal laws, *Alabama* v. *United States*, *supra*.

The statutes contain no express or implied reference to the Army's authority to investigate lawful political activity of civilians and to collect, maintain and distribute reports on them. Indeed, since protection of the political freedom of citizens and organizations forms the very essence of constitutional liberty and security, it is difficult to imagine a construction that would do more violence to the statutory language than the one suggested by the Army. That the Executive has statutory as well as constitutional authority to combat *illegal overt acts* amounting to "insurrection" *after* the failure of civilian authority does not mean that the Army can spontaneously institute an intelligence gathering operation aimed at civilians.

If there were any doubt about the meaning of these statutes, it should have been resolved by the decision of the Supreme Court in *Schneider* v. *Smith*, 390 U.S. 17 (1968), which dealt with a similar statute authorizing the President to safeguard vessels against sabotage and other subversive conduct. Purporting to act under that authority, the President promulgated regulations authorizing the Coast Guard Commandant to gather information about the political beliefs and associations of civilian seamen. The Court held that the statute did not contemplate such broad investigations:

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[11] U.S. Constitution, Art. I, § 8, Cl. 14–16.

[12] Indeed, no troops or militia can be employed by the President under this chapter unless and until "he shall by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time." 10 U.S.C., § 334.

"The present case involves investigation, not by Congress but by the Executive Branch, stemming from congressional delegation. When we read the delegation with an eye to First Amendment problems, we hesitate to conclude that Congress told the Executive to ferret out ideological strays in the maritime industry. The words it used—'to safeguard * * * from sabotage or other subversive acts'—refer to actions, not to ideas or beliefs. We would have to stretch those words beyond their normal meaning to give them the meaning the Solicitor General urges. 390 U.S. at 26-27."

As Justice Douglas pointed out in his dissenting opinion in *Laird* v. *Tatum:*

"If Congress has passed a law authorizing the armed services to establish surveillance over the civilian population, a most serious constitutional problem would be presented. There is, however, no law authorizing surveillance over civilians * * * [408 U.S., at 165]."

Not only is there no law authorizing military surveillance, there are several statutes which appear to forbid it, even under emergency conditions. The Posse Comitatus Act [18 U.S.C. § 1385], for example, prohibits the use of military forces "to execute the laws * * * except in cases and under circumstances expressly authorized by the Constitution or Act of Congress." One federal court has construed that statute "as expressing the inherent antipathy of the American to the use of troops for civil purposes." *Wrynn* v. *United States*, 200 F. Supp. 457, 465 (E.D.N.Y. 1961). Similarly, 18 US.C. sections 592 and 593 bar the use of armed forces to supervise elections, while 18 US.C section 1384 prohibits military police from making "investigations, searches, seizures or arrests of civilians" suspected of engaging in prostitution in the vicinity of military bases.

Nor can the military fall back on a claim of inherent power to protect the national security in order to justify its wholesale invasions of the constitutional rights of civilians. In two of the leading Supreme Court cases involving similar assertions of inherent power by the Executive, the claim was rejected in both instances, either because the will of Congress had been expressed in a contrary manner, *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952), or because constitutional rights had been violated by Executive act unauthorized by statute. *United States* v. *United States District Court, supra.* Where the military has usurped civil authority the Supreme Court has consistently rejected the claim of an inherent power based on military necessity. See. e.g., *Ex Parte Milligan*, 71 U.S. (4 Wall.) 2 (1866). As Justice Murphy pointed out in an eloquent concurring opinion in *Duncan* v. *Kahanamoku*, 327 U.S. 304, 324–25 (1946):

"The argument [of necessity] thus advanced is * * * a rank appeal to abandon the fate of all our liberties to the reasonableness of the judgment of those who are trained primarily for war."

III. COMMENTS ON S. 2318

S. 2318 is a broad legislative prohibition of military surveillance. While there may be some reason to question the necessity for legislation which expressly prohibits government action already implicitly prohibited by the Constitution and existing legislation, on balance we believe that the special circumstances surrounding the practice of military surveillance make the enactment of S. 2318 essential.

In light of the Supreme Court's decision in *Laird* v. *Tatum*, it is unlikely that the broad prohibition contained in S. 2318 will be implemented by the courts without express statutory authority. While the Supreme Court majority rejected the idea that self-discipline on the part of the military is a solution to complaints about broad military surveillance, it took such a narrow view of standing and justiciability that only the most egregious complaints are likely to be adjudicated. Furthermore, the Army's cutback of its surveillance operations is implemented by a Defense Department Directive (5200.27, promulgated March 1, 1971) which gives great leeway to the military to continue or reinstitute certain surveillance practices. This suggests that even if self restraint were to be exercised by all future military intelligence commands, the military still does not believe that its surveillance of civilians is beyond the law.

A. *Section 2*

1. *The Prohibition.*—The first part of Section 2 prohibits any civil military officer of the United States from employing any part of the armed forces or a state militia "to conduct investigations into, maintain surveillance over, or record information regarding the beliefs, associations, or political activities of any person not a member of the Armed Forces * * *." When read in conjunction with the statutory definition of "surveillance" [Sec. 2(c)(4)]—"monitoring conducted by means which include but are not limited to wiretapping, electronic eavesdropping, overt and covert observation, and civilian informants"—the prohibition is both broad and clear.

Three general points need to be made with respect to this prohibition. First, it is essentially jurisdictional and does not prohibit surveillance of civilians except by the *military*. Although we believe that surveillance and intelligence gathering by other agencies of government suffer from many of the same constitutional infirmities described above and must be brought under legislative control,[13] the fact that S. 2318 deals only with military surveillance makes its broad prohibition both reasonable and precise. The Constitution itself provides that the military has no jurisdiction over civil matters except as granted by Congress. This does not mean, however, that civilian investigative agencies, such as the F.B.I., cannot investigate persons suspected of engaging in criminal activity affecting the military; it only means that the military has no authority to conduct such investigations. Similarly, the prohibition does not mean that the military cannot investigate military personnel suspected of violating military law, since this is an area in which the military has a clear jurisdictional basis for its actions.[14]

The second general point to be made is that the prohibition is absolute except where Congress specifically provides that it does not apply. This means that there is no grant of a discretionary authority to the Secretary of Defense or any military personnel to determine the circumstances under which surveillance should be permitted on a case-by-case basis. One of the principal features of the administrative prohibition of military surveillance currently in effect (DOD Directive 5200.27) is that the prohibition applies unless surveillance is "specifically authorized by the Secretary of Defense or his designee." This discretionary approach is entirely inconsistent with the military's lack of jurisdiction over civilians.

The third general point is that the prohibition by its terms is not limited to domestic surveillance but extends to Army intelligence gathering about "the beliefs, associations, or political activities" of American civilians abroad. The recent widespread and intrusive surveillance by the Army of Americans in Germany—using techniques such as wiretapping and mail opening which apparently were not used by the Army even at the height of its domestic surveillance operations—demonstrates what can happen if the prohibition does not apply world-wide.[15] This view is consistent with the principle that citizens do not lose their constitutional rights, at least with respect to actions by the United States government, when they travel abroad. See, e.g., *Reid* v. *Covert*, 354 U.S. 1 (1956); *Kent* v. *Dulles*, 357 U.S. 116 (1957). Furthermore, there is even less statutory basis for the military to conduct surveillance abroad than there is for it to do so domestically, since the "insurrection statutes" (10 U.S.C., §§ 331-34) are limited by their terms to domestic disorders.

2. *The Exceptions.*—Section 2(b) specifies four exceptions to the general prohibition against military surveillance.

The first permits surveillance operations to commence after the President has "actually and publicly" assigned troops to repel an invasion or suppress a rebellion, insurrection or condition of domestic violence, pursuant to the

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[13] See, e.g., Statement of Aryeh Neier and John H. F. Shattuck on behalf of the American Civil Liberties Union, On S. 2963 and S. 2964 Relating to Criminal Justice Information Systems, before the Subcommittee on Constitutional Rights, Senate Judiciary Committee, 93rd Cong. 2nd Sess. (March 7, 1974), at pp. 11–13.

[14] This is not to suggest, however, that the military can investigate in a manner which violates the constitutional rights of soldiers or other military personnel. See e.g., *Committee for GI Rights* v. *Schlesinger*, 42 L.W. 2365 (D.D.C. January 11, 1974).

[15] DOD Directive 5200.27 (March 1, 1971) does not apply to military units overseas.

Constitution or the "insurrection statutes." While this exception is probably necessary, it must not be read to authorize wholesale suspension of constitutional rights within an entire region or state as a result of a presidential troop call-up in one locality under 10 U.S.C. §§ 331-34. It has long been settled that while civil government is still functioning the Constitution forbids the military from acquiring jurisdiction over civilians. The Supreme Court held more than a century ago that military necessity does not justify a suspension of constitutional rights unless "[t]he necessity [is] actual and present, * * ,* *such as effectively closes the courts and deposes the civil administration*." *Ex Parte Milligan*, 71 U.S. (4 Wall.) 2, 127 (1866) [emphasis supplied]. For this reason the military should be required to use the least drastic means available, consistent with the constitutional rights of civilians, to collect the intelligence it requires to perform its statutory function *after* being publicly assigned by the President to repel an invasion or suppress a rebellion.

The second exception allows the military to investigate two separate types of criminal activity: (1) "criminal conduct committed on a military installation" and (2) "criminal conduct . . . involving the destruction, damage, theft, unlawful seizure or trespass of the property of the United States." Crimes committed on military installations fall under military jurisdiction and are properly excepted from the prohibition of S. 2318. There is no particular reason why crimes against "the property of the United States," however, should be regarded as coming within military jurisdiction. The Federal Criminal Code specifies many crimes against federal property which are routinely investigated by civilian law enforcement agencies and prosecuted by the Justice Department. There would appear to be no compelling reason to grant the military a concurrent jurisdiction to investigate such crimes, particularly if they do not necessarily involve military property. Crimes against military property, moreover, would fall within the exception for criminal conduct committed on a military installation. The broad federal property crimes exception, therefore, is an unnecessary expansion of military jurisdiction.

The third and fourth exceptions are, at least for the purpose of this bill, narrowly drawn and generally acceptable. The third exception—military and defense facility employment screening—requires a clear statement in the legislative history that the military cannot collect information about "the beliefs, associations or political activities" of civilians simply in order to evaluate their suitability for employment in case they should ever apply. The exception should be construed to permit only those security investigations which are reasonably necessary preconditions to particular kinds of employment in the military, and which are conducted only *after* a civilian has in fact applied for such employment. The fourth exception excludes from the general prohibition state militia called up by state governors. If this exception were to encourage states to use their militia for political surveillance, it would raise serious constitutional questions. For this reason it would be wise to indicate in the legislative history that the exception is not intended to authorize state militia to engage in surveillance activities otherwise prohibited by federal law.

B. Section 3

Section 3 contains two separate forms of civil remedy for violations of the broad prohibition set forth in Section 2. Both are essential to the enforcement of the prohibition, although each in its present form requires some amendment.

1. *Individual actions for damages and equitable relief.*—The bill provides that "[w]henever any person is *aggrieved* as a result of any act which is prohibited" by Section 2(a), such a person may bring a civil suit for damages regardless of the amount of pecuniary injury. Similarly, "[w]henever any person is *threatened with injury* as a result of any act which is prohibited" by Section 2(a), such a person may sue for an injunction against the prohibited act.

Neither of these provisions is satisfactory because the use of the terms, "aggrieved" and "threatened with injury", begs the question posed by *Laird* v. *Tatum*: what protected interest is invaded by military surveillance of civilians? The answer should be that whenever the "beliefs, associations or political activities of any person not a member of the Armed Forces" are the subject of military surveillance, that person's freedom of speech and association and right to privacy are abridged, regardless of whether he suffers any *additional* form of injury as a result of the surveillance, such as the loss of a job or the inhibition of his political behavior.

Section 3(a), therefore, should be amended to provide as follows:

"§2691 Civil Actions Generally; Illegal Surveillance

"(a) Whenever any person *is the subject of any investigation, surveillance or data-keeping prohibited by Section 1386* of Title 18, United States Code, such a person may bring a civil action for damages and/or equitable relief irrespective of the actuality or amount of pecuniary injury suffered."

2. *Class actions for injunctive relief.*—Section 3 also creates a form of abstract standing for "any person who has reason to believe that a violation of Section 1386 * * * has occurred or is about to occur" to bring a class action "to enjoin the planning or implementation of any activity in violation of that section." While this sweeping grant of civil enforcement authority to citizens to act as "private attorneys general" is certainly in the interest of the American Civil Liberties Union, it is worth pointing out that this provision may be too broad to pass constitutional muster.

The minimal constitutional standing requirement is that a party have a "personal stake" in the outcome of the litigation. *Baker* v. *Carr*, 396 U.S. 186, 204 (1962). This stake need not be more than a "logical nexus" between the status of the party and the infringement alleged, as, for example, a taxpayer's interest in the non-expenditure of public funds for constitutionally impermissible purposes. *Flast v. Cohen*, 392 U.S. 83, 101 (1968). With respect to military surveillance, therefore, a party could establish constitutional standing to challenge a prohibited investigation either as a subject or prospective subject of the surveillance, or as a taxpayer.

On the other hand, apart from this constitutional question, there is nothing objectionable about the broad standing that would be conferred by Section 3(a) of S. 2318.

The class action provision is itself a safeguard against floods of litigation, since a certified class action would necessarily involve the consolidation of claims. Furthermore, it should be noted that at least one federal statute, the Freedom of Information Act [5 U.S.C. § 552], confers an even broader standing upon "any person" than does S. 2318.

CONCLUSION

S. 2318 is an important piece of legislation. Its enactment would go far toward curing what Justice Douglas called "a cancer on our body politic" in his dissent in *Laird v. Tatum*. Because the use of the military in the civilian arena is so abhorrent to our constitutional form of government, we urge the Congress to adopt the broadest possible prohibition against military surveillance, declaring civilian politics jurisdictionally off-limits for the armed forces.

Thank you for the opportunity to appear before the Subcommittee today.

Senator ERVIN. Thank you, Mr. Shattuck, for a very enlightening statement.

The committee will stand in recess until tomorrow morning when we meet at the same place

[Whereupon, at 1:10 p.m., the committee recessed to reconvene at 10 a.m. on April 10, 1974.]

MILITARY SURVEILLANCE

WEDNESDAY, APRIL 10, 1974

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 2228, Dirksen Senate Office Building, Senator Sam J. Ervin, Jr. (chairman) presiding.

Present: Senator Ervin.

Also present: Lawrence M. Baskir, chief counsel; and Britt Snider, counsel.

Senator ERVIN. The Subcommittee will come to order.

Counsel will call the first witness.

Mr. BASKIR. Mr. Chairman, our first witnesses are Mr. David O. Cooke, Chairman, Defense Investigative Review Council, Department of Defense; Mr. Robert Andrews, Office of the General Counsel, Department of Defense; and Mr. Rowland Morrow, who is Executive Secretary, Defense Investigative Review Council.

Senator ERVIN. I want to welcome you to the subcommittee and express our appreciation to you for coming to give us the benefit of your views in respect to this legislation.

You may proceed in your own way.

TESTIMONY OF DAVID O. COOKE, CHAIRMAN, DEFENSE INVESTIGATIVE REVIEW COUNCIL, DEPARTMENT OF DEFENSE; ACCOMPANIED BY ROBERT T. ANDREWS, OFFICE OF THE GENERAL COUNSEL, DEPARTMENT OF DEFENSE, AND ROWLAND A. MORROW, EXECUTIVE SECRETARY, DEFENSE INVESTIGATIVE REVIEW COUNCIL

Mr. COOKE. Thank you, Mr. Chairman.

Mr. Chairman, the Department of Defense welcomes this opportunity to respond to the subcommittee's request for our views on Senate bill S. 2318. Inasmuch that this proposed legislation is aimed directly at members of the Armed Forces, personnel of the Defense Department and our national military establishment, it seems appropriate that we should be consulted and that our views be heard on such a vital subject. It is our sincere desire to be helpful to this subcommittee in approaching legislation so fundamental to the role which the military establishment has been asked to fulfill in our society at different times in history.

The proposed legislation would make it a criminal act for any official or other members of the military establishment to acquire or maintain information relating to the "beliefs, associations, or political activities" of any person or organization not affiliated with the Armed Forces. While we understand and appreciate the history which led to drafting this legislation, and agree that there should be clear limitations and boundaries on the jurisdiction of the military to investigate persons outside of the Armed Forces, we have concluded that legislation which would provide for criminal penalties, injunctive relief and civil damages is not only ill-advised, but would provide a number of unintended results.

It may be useful to review for the benefit of the subcommittee the steps the Department of Defense and the three military departments have taken to restructure our investigative activities. We have over the past 3 years been in communication with the chairman of this subcommittee, furnishing him with updates and status reports, and have also responded to several searching inquiries of the subcommittee since their investigative hearings were concluded. The purpose of this correspondence was to provide information by which the Congress could be assured that the military investigator is now being utilized solely in activities directly related to the protection of military functions, personnel, and property. We are convinced our own inspection and close monitoring activities have brought our investigative activities under close civilian control and that the problems which arose in 1968 and 1969 are now part of history.

Among the actions the Department of Defense has taken to bring all investigative actions within the Department under control of the civilian leadership are:

In February and March of 1971, we created for the first time a Department-wide defense investigative program, which places responsibility for the direction, management, and review of all program activities under a civilian Assistant Secretary of Defense, and assigned to the secretaries or under secretaries of the military departments responsibilities for the investigative activities of their components.

We created a Defense Investigative Review Council (DIRC) composed of top leadership from the Department of Defense, the military departments and the Defense Intelligence Agency for policy overview, monitoring and inspection of investigative activities across the board in all military departments and defense agencies. The Defense Investigative Service is also subject to their policy overview and inspection.

We initiated an on-going program of unannounced inspections of all component investigative and related security organizations to assure strict compliance with policies on the acquisition of information relating to persons not affiliated with the Department of Defense.

We adopted stringent and carefully worked out retention criteria governing the acquisition and retention of information relating to civilian organizations or persons not affiliated with the Department of Defense.

We fashioned inspection techniques, announced uniform terminology throughout the investigative world in defense, established policies on the screening and disposition of information received gratuitously from walk-in's or via liaison with other agencies; developed standards governing the inclusion and disposal of information in counterintelligence publications; standards for recruitment and training of investigative personnel; criteria and standards for seeking and processing requests for special operations, and for bilateral counter-espionage operations. The list goes on with over a dozen additional actions by the DIRC, addressing a wide spectrum of problems as they arose. These problems were thoroughly staffed by a DIRC working group, with final action by the Council acting in joint session. The DIRC continues to meet regularly though not as frequently as we did during 1971 and 1972.

Significantly, the DIRC principals have conducted 14 separate unannounced inspections throughout the country, in which the DIRC principal member—either the Chairman, one of the service Under Secretaries, General Counsel, or Director of the Defense Intelligence Agency—personally participated. These inspections have been in addition to internal inspection of investigative activities required by departmental directives which the service Secretaries are required to report on annually. This inspection program continues.

We developed a carefully regulated system for receiving any information relating to potential civil disturbances from the Department of Justice, having it reviewed and evaluated only at departmental level, making no dissemination of permanent record of such information unless and until specifically authorized by the Under Secretary of the Army.

It was against this experience of civilian authority, direction, and control that I wrote you on March 19, 1974, and addressed what I considered the central concern of your subcommittee—whether the efforts by responsible officials in the Department of Defense have been effective in assuring that military investigative activities are limited to their proper and intended sphere. In that letter I stated:

> It is our belief that the excesses of the past have in fact ended; that investigation components have been thoroughly imbued with the restrictions placed on them; and that, with only negligible exceptions such restrictions have been complied with, in spirit as well as letter.
>
> I offer these assurances not as a matter of what we hope to see, but as an expression of the progress that has been achieved, backed by the personal participation of the top civilian leadership. It is to demonstrate this point that we have gone to the length of providing you with our internal reports of unannounced inspections. Without attempting to minimize the few discrepancies that have been disclosed, primarily involving the retention of old files, these reports are compelling confirmation of the degree of current compliance, which approaches 100%.

We have demonstrated that by limiting our investigative activities solely to those matters directly related to the protection of our own property, functions and personnel, we have been able to function adequately. We have built in, as I am sure this subcommittee is aware, some flexibility for the approval at top Defense level for what we call special operations, which involve obtaining information relating to organizations not affiliated with the Department of Defense which we perceive as presenting a direct and immediate threat to our functions and personnel. This extraordinary authority for approval of special operations has been exercised on extremely few occasions and only in cases where we felt there was a direct threat to the safety or continued efficient functioning of our units.

Although we also have provided by our directives for the Under Secretary of the military department personally to authorize attendance at demonstrations or meetings in the civilian community, this authority has never been invoked since the regulation was promulgated in early 1971.

All computer data banks on nonaffiliated civilians have long since been destroyed and no new ones have been created, although our directives do have a proviso that the Chairman of the DIRC might authorize the creation of such a data bank. No one has even applied for such permission, and we see no likelihood in the foreseeable future for the creation of such data banks.

We have been systematically purging files previously accumulated in the field of any information relating to persons not affiliated with the Department of Defense. Field inspections confirm that these files are entirely purged. However, there remain a large number of files in dead storage in central repositories which may or may not contain information on nonaffiliated persons. To handle these and prevent the unauthorized use or dissemination of such information we have well-established screening programs which require that any file being requested from record repositories is first examined to determine whether it contains information relating to a nonaffiliated person. If, upon retrieval from storage and examination we find it pertains to a nonaffiliated person, it is destroyed on the spot and the requester gets a "no-record" response.

We think it unavoidable for some years to come that we will, from time to time, come upon files in our major record repositories, which contain—for example, FBI reports on persons not affiliated with the Department of Defense. Full scale screening and purging of all such files would cost us many millions of dollars. We believe our existing screening and purging systems are fully adequate to prevent the utilization of any information we may unwittingly have on nonaffiliated persons.

The DIRC has addressed the issue of whether the DIRC should apply its restrictions overseas. In November 1971, after considering all the pros and cons of establishing investigative and record-retention constraints worldwide, the DIRC decided that this would be inappropriate. Differences in relationships with foreign governments, treaties, status of force agreements, and some unstated or unwritten accords all serve to make application of the policies abroad enormously complicated and create more problems than it would solve. Moreover, the extension of the investigative constraints on the military investigator abroad does not appear to be necessary from a public policy standpoint as it is in this country, where the

FBI has primary internal security responsibilities. Also, in overseas areas, the idea of investigative activity is intimately connected with and commingled with foreign intelligence operations and missions, whereas in the United States these two functions are easily separable. To extend investigative policies abroad would tend to blur the distinctions we have drawn between intelligence gathering on the one hand and investigations of personnel on the other. For these reasons, the Defense Investigative Review Council voted unanimously not to extend the investigative policies of DOD Directive 5200.27 beyond the geographical boundaries of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, and U.S. territories and possessions.

I would now like to turn to a consideration of S. 2318 as introduced by you, Mr. Chairman and your cosponsors:

The Department of Defense is in full accord with the proposition that unrestricted investigation of the political activities of persons and organizations in the civilian community should not be permitted. At the same time, the Department of Defense has a well recognized need to conduct investigation of civilians where such activity is related to a legitimate Government interest. Because S. 2318 fails to draw a clearly defined line between impermissible investigation and that which is necessary and important in carrying out the mission, the Department of Defense is opposed to the enactment of any criminal statute. Moreover, after considering legislative changes to accommodate to the legitimate needs of the military departments, the Department concluded that, even in its revised form, the criminal legislation would not materially add to the administrative restraints and controls already promulgated by the Secretary of Defense and the service Secretaries.

Among representative problems that would arise if S. 2318 were enacted in its present form would be the following:

Military members could be charged with a crime if they are found in possession of the Congressional Directory. The latter document, one must admit, serves very well as a "dossier" on the "beliefs, associations, or political activities"—to use the bill's language—of members of this subcommittee as well as the entire Congress. A similar criminal penalty would flow from possession of such other innocuous or irrelevant publications as "Who's Who", Martindale Hubbell's Legal Directory or Washington's "Green Book".

The bill makes no exception for the possession of published literature such as the Congressional Record, publications of other subcommittees of the Senate Judiciary Committee such as its Internal Security Subcommittee. Its indiscriminate lumping together of all kinds of innocent information or literature within the prohibited ambit of "maintaining and recording" information on beliefs, associations or political activities is a serious flaw, and itself a possible infringement upon first amendment rights.

Possession of the Attorney General's list of subversive organizations would become a clear criminal act under this bill.

The bill prohibits military officials and members from engaging in any and all kinds of investigation and information gathering on any person, whether affiliated with the Armed Forces or not, except for the four narrow and specific exemptions listed in the bill. Paradoxically, three of these exceptions permit investigations not of civilians but of ourselves.

The bill prohibits receipt of any information via liaison with the FBI or others relating to threats from civilian groups outside the Armed Forces affecting the safety and welfare of the DOD personnel, property or functions. Our reading of the bill indicates to us that if a civilian group with a patina of political orientation such as the Black September terrorist group or the Symbionese Liberation Army, should be planning but has not yet committed a terrorist attack on a military base, or plans to steal nuclear material or other weapons, we would be in violation of the criminal statutes if we record or maintain such advance threat information. Such a result is insupportable.

The bill would permit investigation of the suitability for employment of persons seeking employment with the Armed Forces but inexplicably omits any mention of investigation of persons for security clearances required either in the course of their employment with the Armed Forces or in private industry wherein access to classified national security information is required.

The bill would prohibit the receipt of any information from any source relating to an impending civil disturbance, unless the President has publicly assigned the Armed Forces to the task of repelling invasion or suppressing rebellion, insurrection or domestic violence. This, of course, would deny the military any advance information which might permit them to preposition troops as we have done on several occasions over the past three years. Advance information received from the Department of Justice has been found essential if the Armed Forces are to perform their proper missions assigned them pursuant to title 10 of the U.S. Code.

The purported exemption in the bill designed to permit the Armed Forces to investigate criminal conduct committed on a military installation is not sufficiently broad to permit investigations of a wide variety of criminal acts such as narcotics trafficking involving both military personnel and civilian pushers, procurement fraud, black marketing, bribery, conflicts of interest, surplus property disposal, collusion with civilian contractors, most of which investigations are run in concert with civilian law enforcement agencies.

The same criminal exemption clause would preclude us from investigating conspiracies, suspected espionage, planned thefts of weapons, inducement to sabotage, attempts to solicit classified information from military personnel and other attempted crimes which have not yet resulted in a completed criminal act.

We find no language in the bill which would permit us to investigate threats made to officials of the military departments, such as harassing phone calls, cranks, or "crazies" who threaten the safety of our personnel. We submit we ought to be able to protect our own people, and not at the risk of facing criminal charges ourselves under this bill.

The bill appears to make no provisions for those situations wherein the Armed Forces are called upon by either statute or executive order to assist other governmental agencies in performing governmental tasks. Examples of these are assistance to the Secret Service in protecting public officials, candidates during Presidential campaigns, foreign visitors; assistance to the Drug Enforcement Agency in international narcotics interdiction efforts; assistance to State and local law enforcement agencies, with the loan of equipment, firefighting devices, natural disaster assistance in cases of floods, tornadoes, aerial pursuit of aircraft hijackers, et cetera. An example we are sure must not have occurred to your subcommittee is the need for the Army Corps of Engineers when involved in public works projects to prepare environmental impact statements including the details and rationale for any community opposition to Corps of Engineers projects. Many of these involvements with other Federal or local agencies might bring the military participants unto unwitting violation of the criminal prohibitions contained in this bill.

The Department of Defense also from time to time becomes involved in counterespionage operations in cooperation with other Government agencies in a manner which might bring them into conflict with the statute. These are very important and sensitive matters which I do not wish to spell out in greater detail except to note that the target of such operations is a foreign intelligence organization. Surely we do not wish to inhibit, let alone preclude, such vitally important national security investigations.

I would now like to address the specific language of S. 2318. On receipt of the comments of the military departments on the proposed legislation I requested that Department of Defense representatives meet with your subcommittee staff members to discuss the overbreadth features of the bill. Certain of the difficulties in drafting effective and realistic legislation were related to your staff. Thereafter, lawyers from the three military departments again convened to consider ways and means by which this might be overcome. These efforts highlighted several issues which we believe should be resolved before any legislation is reported out of subcommittee.

The first and foremost problem is one of defining precisely the specific acts which constitute a crime. For example, the bill applies to investigations regarding "beliefs, associations, or political activities", but it does not define this very essential element. While we have considered various definitions, we have experienced practical difficulties in developing a meaningful legislative description of political activities that would be clearly understood by our personnel, and that would stand a court test when challenged. Another definitional problem arises from the apparent distinction in the bill between "investigation" and "surveillance". As we see it, the apparent intention of the bill is to outlaw, under certain circumstances, the use of persons and investigative devices, by either covert or overt means, for the purpose of obtaining information about the political activities and beliefs of civilians having no affiliation with the Department. It appears unwise to create definitional problems by using two separate terms, and especially to include "electronic surveillance" which is already covered by existing legislation.

A second major drafting problem is to spell out, in express terms, the scope of the prohibition against politically oriented investigations. This also applies to records the maintenance of which would constitute a crime. In ruling against the Subversive Activities Control Act in *U.S.* v. *Robel*, 389 U.S. 258, at 262, the court made an observation which has application to the legislation now before you. In referring to the *Aptheker* case, Chief Justice Warren stated in part:

> We held that the clarity and preciseness of the provision in question make it impossible to narrow its indiscriminately cast and overly broad scope without substantial rewriting. Id., at 515, S. Ct., at 1669. We take the same view of Section 5(a) (1) (D), of the Subversive Activities Control Act. It is precisely because that statute sweeps indiscriminately across all types of association with Communist-action groups, without regard to the quality and degree of membership, that it runs afoul of the First Amendment.

Without a considerable narrowing of the scope, the bill would appear to have application to a countless number of records within the Department of Defense, confined not alone to criminal or investigative files, but to records centers, libraries, public information centers, and other offices totally unrelated to the intended objective.

The third problem is to enumerate with precision the several instances in which investigations and records are properly exempted from the application of the bill. While S. 2318 properly recognizes the need for the military forces to be employed in investigative activities in four enumerated areas, it falls considerably short of giving proper recognition to a number of other legitimate and well recognized defense needs. In our earlier testimony we referred to a number of specific examples where use of military investigators was justified because the matter under investigation involved property, personnel, funds, activities or security interests of the Department of Defense. Of particular concern is the failure of the bill to exclude instances in which military personnel are assigned or detailed to carry out a statutory function of another agency. Although the Posse Comitatus Act, 18 U.S.C. 1385, recognizes these statutory exceptions, the exceptions in the proposed section 1386 do not.

The fourth area of concern to the Department of Defense and its personnel is the provision authorizing civil actions for damages irrespective of the existence of any pecuniary injury. Equally objectionable is the provision calling for injunctive relief by individuals or classes of persons similarly situated. While we recognize this proposal as an effort to overcome the *Laird* v. *Tatum* decision, 408 U.S. 1 (1972), we believe the majority opinion is sound when it declared:

> Allegations of a subjective "chill" are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harms: "the Federal courts established pursuant to Article III of the Constitution do not render advisory opinions". *United Public Workers* v. *Mitchell*, 330 U.S. 75, 89 (1974).

We might add, that in opposing these so-called remedies, the military departments are not without means of correcting deficiencies or errors in the system. The departments have taken action to discipline persons who have violated regulations governing the investigation and record keeping of persons having no affiliation with the Department of Defense. In less serious offenses, the military member may receive an official reprimand. In more serious cases the offending person could be charged under the Uniform Code of Military Justice.

On a more positive note, we should mention that the proposal to extend the Posse Comitatus Act to the Navy and Marine Corps is easily accomplished. In fact, it would be nothing more than a reflection of present administrative practices. By SECNAV instructions, the Navy and Marine Corps are bound to the same constraints that are applicable by law to the Army and Air Force. However, the extension of the prohibition to the Coast Guard is a matter to which I defer to the Secretary of Transportation. We might note, however, that the Coast Guard has specific law enforcement responsibilities which have not been taken into consideration.

To sum up, we have attempted in our testimony here today to review for you the intensive efforts we have made within the Department to confine our investigative activities to their proper sphere. Over the past several years we have been furnishing this subcommittee with clear evidence supporting the conclusion that the situation which previously existed is no longer an issue to be addressed by legislation. Most significantly we hope that we have demonstrated to this subcommittee some of the legal and practical problems in drafting a criminal statute which will pass constitutional muster. We hope we have shown that the present version of this bill has fatal overbreadth problems, and that the serious effort which must be made to narrow down in the requisite precise language required of a criminal statute to prescribe the mere acquisition of and holding information in a governmental agency is a virtual impossibility.

Because of the numerous flaws in the present bill, the indiscriminate sanctions it would impose on unlimited classes of persons for mere record keeping, and the potential burdens it would impose on first amendment freedoms for persons not only within the Department of Defense but also upon any "civil officer of the United States" we must record our unqualified opposition to S. 2318.

Most significantly, we believe we have demonstrated that the problems which led to the extensive hearings this subcommittee conducted in 1970 and 1971 are now a part of history. Spurred by the light which your hearings shed on this issue, the Department of Defense set about in a most positive way to correct the excesses which the civil disturbance intelligence collection mission had engendered. Great credit must go not only to this subcommittee for lighting the way but also our former Secretary of Defense, Melvin R. Laird, who initiated the strongest possible measures to restructure and regulate the investigative resources within the Department. Three years later, these policies are now a secure part of our doctrine. We have demonstrated we have the mechanism to ensure that our policies are observed in both letter and spirit. Secretary Schlesinger fully supports these controls and has made it crystal clear that the close supervision, inspection and review of investigative activities shall continue.

We thank the chairman and the subcommittee for the opportunity of sharing our views on this important issue.

Mr. Chairman, we thank you for this opportunity.

Senator ERVIN. You state that the definitions are not sufficient. Can you define the word "beliefs" any more than the word "beliefs" defines itself?

Mr. COOKE. Mr. Chairman, we believe that the conjunction of the definitions of "beliefs, associations——

Senator ERVIN. Let's deal with beliefs first, because the first amendment allows anybody to believe anything they want to.

Mr. COOKE. Indeed it does, sir. We in the Department of Defense certainly support the right under the first amendment of anyone to believe anything he wants to.

Senator ERVIN. Can you define "beliefs" any more than the word "beliefs" defines itself? I can't.

Mr. COOKE. Mr. Chairman, we find that very difficult to do.

Senator ERVIN. I don't think it can be done. I don't think there is any use in trying to define the indefinable when the definable defines itself.

The same thing is true of the word "associations". I think a man has a right to join any association he wants to.

Mr. COOKE. We agree.

Senator ERVIN. And I think that a man has a right to engage in any political activity he wants to.

Mr. COOKE. We agree.

Senator ERVIN. Well, that is all this bill protects.

Mr. COOKE. Mr. Chairman, I think it does considerably more. It makes it a criminal provision to conduct investigation, maintain surveillance or record or maintain information.

Senator ERVIN. You are saying, for example, there is no provision here to allow the Department of Army to require security checks for people who are already in service, that is, employed by the Army. But subsection 3 on page 3 says you can conduct investigations to determine the suitability of employment or the retention of employment of any individual actually seeking employment or employed by the Armed Forces of the United States or by the militia of any State or a defense facility. If you require a man to undergo a security check in order to retain employment, you can certainly investigate him.

Mr. COOKE. Mr. Chairman, we do not require a man to undergo a security check to retain employment. Under the Executive orders, we require a security check to grant him a specific level of security clearance, depending upon his need and access to classified information.

The fact that for one reason or another he may not qualify for a clearance to top secret does not mean his employment or his enlistment in the Armed Forces would be terminated.

Senator ERVIN. Well, this bill doesn't say that.

Mr. COOKE. This bill, in our judgment, Mr. Chairman, would restrict this.

Senator ERVIN. This bill, from reading your statement, has apparently conjured up more non-existent legal ghosts than ever imagined. There is not a syllable in this bill that deprives the Army of anything it now has the lawful power to do. It just forbids the use of the military to suppress the beliefs and the associations or the political activities of people.

Mr. COOKE. Mr. Chairman, section (b), section 2(b) of the bill provides for four limited exceptions to section 2(a) of the bill.

Senator ERVIN. Yes, and section——

Mr. COOKE. Apparently, the provisions of Section (b) were inserted because in the view of the drafters of the bill, without such specific exceptions, those activities described in section (b) would fall within the purview and the criminal restrictions of section (a) which make it a crime to conduct an investigation, retain surveillance, record or maintain information.

Senator ERVIN. This section was intended to keep somebody else from conjuring up some legal ghosts. You have got a right to inquire into the man's associations when you want to hire him. You have a right to do that.

I don't object, if you want to read the Congressional Record but this bill doesn't prohibit that, because you don't get a copy of the Record by spying.

Mr. COOKE. Mr. Chairman, the provisions of section (a) make it a crime to record or maintain information regarding beliefs, associations, or political activities. As we read section (a), section (a) does not limit the records or information to records or information obtained by liaison or by investigation but rather proscribes or forbids retention of all information or records regardless of how obtained if they relate in one way or another to beliefs, associations, or political activities.

Senator ERVIN. I don't think it is susceptible to that interpretation when you understand the overall purpose.

You say under this Army Corps of Engineers cannot even prepare an environmental report.

Mr. COOKE. Mr. Chairman, the Army Engineers in preparing an environmental impact statement are required to record opposition to it as part of the statement. In our reading of the bill that would be proscribed: not only proscribed, but would subject the Army Engineers to criminal penalties.

Senator ERVIN. Do you really think that?

Mr. COOKE. I do.

Senator ERVIN. Well, if this means what you say, it would be impossible to ever draw a bill on this subject, wouldn't it?

Mr. COOKE. Mr. Chairman, it would be difficult and is. We have, following the meeting of the Defense representatives with your staff, been working hard on this, and we have found it is a very, very difficult task to draw proper legislation in this field. I would hesitate to say that it is impossible.

Senator ERVIN. Well, you object to the sanctions in it.

Did you ever see a law that had any value that didn't have criminal sanctions?

Mr. COOKE. Mr. Chairman, we object in the Department to making this a criminal statute.

Senator ERVIN. And also to making it a civil statute.

Mr. COOKE. We think that as far as the sanctions which relate to civil actions are concerned under the present state of the law as clearly enunciated in *Laird* v. *Tatum*, there are adequate remedies, and those remedies are, as a matter of fact, being pursued now.

Senator ERVIN. There are two things you should note in Laird against Tatum. One is the minority opinions, which are clearer than the majority. The other is that the only reason that you have the decision in that case is because the attorney who had represented the Department of Justice and defended Army spying before this committee and who had voluntarily stated before this committee that the *Tatum* case had no merits, insisted on sitting on the case in violation of a canon of ethics which said no judge should sit on a case in which he has been a lawyer.

If it hadn't been for that, why the decision of the Circuit Court would have been affirmed.

So I don't attribute the same importance to the *Tatum* case that you do. It also conflicts with past cases. Many decisions of the Supreme Court are to the effect that when you violate peoples' rights of association, you don't have to show damage. If you did, why everybody's rights of association under the First Amendment could be violated.

And now, I can't accept your theory that the Army has entirely reformed itself. On Monday, I sat in another hearing and I heard testimony about Army spying during the 1972 election which occurred some time after Secretary Froelkhe had assured this Committee that they had put an end to the use of spying on civilians. I heard that a military intelligence unit in Germany spied on American civilians who were merely persisting in their right, which the Army appeared to think was foolish, to support Senator McGovern for President.

The information I have is that instead of being reprimanded, that the officers in charge of that got promoted. So I can't accept the theory that we can trust the military intelligence to act like a meek lamb and respect the First Amendment rights of Americans in the future without some law requiring it.

Mr. COOKE. Mr. Chairman, may I respond to those observations, please?

Senator ERVIN. Yes, sir.

Mr. COOKE. Apparently the issue you refer to is an issue which received press attention in July and August of 1973, concerning events of Army surveillance of U.S. citizens, foreign nationals and organizations in the Federal Republic of Germany and Berlin. The Department of the Army and Defense were, of course, extremely concerned about these allegations, and as a result the matters were investigated by high level civilian officials in the Department of the Army, and our conclusions were reported to the Armed Services Committees of the Congress.

I recognize that in December of last year, as part of the extensive correspondence that we have engaged in, sir, you submitted another comprehensive set of questions focusing upon intelligence activities in Germany.

We were, or are, in the process of assembling data in sufficient detail so that my office can prepare answers that will be full of responses to the questions submitted. As you know, we have tried to be fully responsive to all your queries.

In February 1974, a complaint was filed in the U.S. District Court for the District of Columbia against the Secretary of Defense, the Secretary of Army, the entire chain of command in the Army responsible for these alleged activities, and the complaint concerned the very subject of the surveillance of which you have inquired.

We intend to respond fully to your committee and we believe that your committee's oversight in this area is appropriate. Our preliminary indications indicate that the counter-intelligence measures adopted by the Army in Germany had been conducted in accordance with our international obligations and the law of the host nation in which the troops were located. We are confident when the issues in the pending legislation are argued, they will be resolved in the Government's favor.

However, since the suit is now pending, it seems to me, and upon the advice of the Department of Justice, that until we have assessed what impact our response might have on a case or at least until the issues at law become converted, because it is still a pending case, it would be inappropriate to respond further.

A final point: as you are aware, the provisions of DOD Directive 5200.27 and the DIRC itself, do not extend beyond the 50 States, the Commonwealth of Puerto Rico, U.S. Territories and Possessions.

Senator ERVIN. Well, my recollection is that we asked for this information 4 months ago and we haven't received it yet. I think it would have been a sufficient compliance with our request if you sent what was sent to the Armed Services Committee which wouldn't have been any great burden.

My information is that it took senior enlisted men and disguised them and had them infiltrate these groups. According to the evidence taken before the other committees on Monday, the information was entirely in connection with the political views of these people. Also that as a result of the investigation into one group, the Concerned Americans in Berlin, a finding was made to the effect that their constitution was in harmony with the Constitution of the United States. And yet they were placed under surveillance.

So I have difficulty accepting the assurance that we can trust Army intelligence to deal gently with the rights of American citizens.

Mr. COOKE. Mr. Chairman, also, I would like to observe as far as I know there was no use of Army investigative units of any component of the Department of Defense during the 1972 Presidential campaign.

Senator ERVIN. Well, my information and the testimony before this committee and two other committees on Monday of this week is to the contrary. Not only did they wiretap people but also they opened mail and then photostated it and sealed it up and sent it on to its destination.

Mr. COOKE. Mr. Chairman, if you are talking about the allegations relating to the Federal Republic of Germany, and in particular Berlin, I can only say that these specific issues are now the subject of pending litigation and I am sure that they will be aired fully and I will repeat my confidence that those issues will be resolved in the Government's favor when the case is heard.

Senator ERVIN. Counsel, do you have any questions?

Mr. BASKIR. Yes, Mr. Chairman.

Senator ERVIN. Oh, one question.

You say if we pass this bill, it would interfere with firefighting by soldiers.

Mr. COOKE. Excuse me?

Senator ERVIN. I understood you say in your statement, if we pass this bill it would keep soldiers from fighting fires.

Mr. COOKE. Mr. Chairman, we are not exactly sure of what seem to be the unintended results of this bill, because in our judgment, the provisions of section 2(a) of the bill have a very broad overbreadth to them that we haven't fully been able to—we haven't been able to fully assess all the unintended consequences.

Senator ERVIN. Well, I construe your statement to say that if this bill passes that it might interfere with the loan of fire fighting devices and assistance in floods and tornadoes and air pursuit and hijacking.

Mr. COOKE. Again, I say that it could do that very thing because the drafters conceived the necessity of putting in section 2(b) which authorized only four very limited exceptions, too limited in our opinion, which suggested anything else is covered by the strictures of section 2(a).

I might observe, for example, the responsibility of the Department of Defense to support the Secret Service in the protection of Presidents and the Presidential candidates would be jeopardized by the present bill.

Senator ERVIN. But this doesn't apply to the Secret Service, only to the military.

Mr. COOKE. But it applies to members of the Department of Defense who, at the request of the Secret Service, are detailed under the control of the Secret Service for purposes of carrying——

Senator ERVIN. Not unless they quit protecting the President and go out to spy on the people.

You state this:

> Many of these involvements with other Federal or local agencies might bring the military participants into unwitting violation of the criminal prohibitions contained in this bill.

These involvements you are talking about are authority for military assistance in natural disasters as in cases of floods, tornadoes, air pursuit and hijacking.

Mr. COOKE. Mr. Chairman, the bill not only restricts so-called investigations or surveillance, it restricts maintenance of records from any source.

Senator Ervin. What provision in this bill would make it a criminal offense for anybody in the military to assist people in the case of a tornado?

Mr. Cooke. Mr. Chairman, the problem is that, again I state the drafters of the bill provided that, except for those four narrow circumstances, any other activity presumably would fall within the strictures of section 2(a) of the bill. I am sure it was unintended.

Senator Ervin. Is it your interpretation that a statute prohibits anything that it doesn't expressly permit?

I still would like you to point out how this would make a man guilty of a criminal offense in assisting people in a tornado or flood.

Mr. Cooke. Mr. Chairman, if a man or a member of the Armed Forces maintained a record or information except as relating to the four overly narrow restrictions of section (b) of the bill, and that record or any information in any way, related to beliefs, associations or political activities, we cannot perceive of the consequences of that, but in my judgment, he would be.

Senator Ervin. Frankly, I don't want the assistance of anybody, military man or not, if I am involved in a flood or tornado—who stops to make records of my ideas or beliefs or political associations.

Mr. Cooke. Mr. Chairman, I cite this only as a hypothetical situation, but it is perfectly possible in a disaster situation that in order to find the people in the district associated with a disaster, one would have to use voter lists, I don't know. They could be used just to find out who was involved or the scope of the disaster. I cite this without knowing disaster assistance.

Senator Ervin. How would the use of a motor boat in a disaster be covered in any way by this—I compliment you on your fertile imagination. I interpret your statement to say that this bill would prohibit everything that it doesn't expressly exempt even though it has not the slightest relationship to those things. There is not a thing in this bill that would prevent the Armed Services from exercising any power they have now with respect to crime, not a thing.

I must say your statement is about the most interesting literature I have read since I read Jules Verne's "Twenty Thousand Leagues Under the Sea."

That is all the observations I have, Mr. Baskir.

Mr. Baskir. Mr. Cooke, the Department has informed the subcommittee that there have been no more than three exemptions a year granted under the regulations. How many exemptions were, in fact, granted each year?

Mr. Cooke. Mr. Baskir, under the provisions of that section of the DOD Directive 5200.27, since 1971 there have been a total of six special operations authorized by the Chairman of the DIRC.

I would like to elaborate on that. Let me say that these requests for special operations are very carefully scrutinized by our civilian leadership. The request must come up from the Under Secretary, the second highest ranking civilian in each of the three military departments.

I would also like to observe that these requests have nothing to do with the beliefs or associations themselves. These are requests where there were active threats against our property or personnel, and let me give you a couple examples without identifying——

Mr. BASKIR. I wonder if you would kindly describe the nature of these operations without specifying the individuals or organizations.

Mr. COOKE. Yes. Let me say they were a group who would advocate, for example, putting sand in the fuel tanks of our planes, or another example, advocating throwing a monkey wrench into the reduction gears of a ship or not obeying orders of a commanding officer of a naval vessel.

Mr. BASKIR. Are these civilian groups?

Mr. COOKE. These groups, and I hesitate to generalize, are a mixture of military and civilians who advocate acts of sabotage or subversion of our personnel for their aims, and they all have some sort of obviously political aspect to them.

I would like to emphasize again that we have been very, very careful in screening these activities. I suspect that the number of requests which have reached the Chairman of the DIRC represent only a small number that has been filtered out as they have been processed up.

This is in no way a "rubber stamp operation." They have been most scrupulous in this.

Mr. BASKIR. I gather these operations in large part involve infiltrating or putting an agent into the organization, in order to find out exactly what their plans are?

Mr. COOKE. That is true and usually a military member of the Armed Forces.

Mr. BASKIR. And have all these operations been completed as of now? Do you have any still being conducted?

Mr. COOKE. There is one operation now on-going.

Mr. BASKIR. The other five have been terminated?

Mr. COOKE. Yes.

Mr. BASKIR. Would the Department be prepared to supply the committee on a classified basis some more details?

Mr. COOKE. We will be glad to inform you of further details in executive session.

Mr. BASKIR. Of all the information that has been submitted to the subcommittee, there are only two groups of information which are now classified. As some of them are selected, paragraphs of the DIRC reports which reflect possible infractions of the regulations and the others are certain materials involving the allegations of surveillance in West Germany.

With respect to the former group, is there any problem in declassifying those selected paragraphs?

Mr. COOKE. As you correctly point out, only one of the 14 DIRC inspection reports is classified confidential, and it has only two paragraphs so designated. The classified paragraphs relate to the Canal Zone, if my memory serves me correctly, but they do not affect the tenor of the report as it applies to the Canal Zone, or the DIRC, but rather notes the inspection team's awareness of military missions being accomplished outside the purview of the DIRC.

The inspection's findings from that inspection, are fully noted in the 15 unclassified paragraphs and the discrepancies relate solely to the retention of records.

Mr. BASKIR. There is no problem in declassifying those?

Mr. COOKE. I think there would be a considerable amount of problem in declassifying these too.

I have not looked at them personally, but as I say, they relate to matters outside the purview of the DIRC.

Mr. BASKIR. Is there any problem with the committee publishing the unclassified DIRC inspection reports?

Mr. COOKE. We have not specifically examined that, Mr. Baskir. As you know, these reports are internal working documents where one could have argued that they should not be furnished to the committee, but in earnestness of our good faith, we voluntarily submitted them to the committee. I think the information, not so much in reports themselves, but the concept of publishing unclassified—publishing internal working documents, is a very serious precedent. We have to examine that. I will say we have made the reports available to you in your role and we will continue to do so. But I have reservations about printing them publicly.

Mr. BASKIR. The reason I suggest that is that it might do much to reassure the general public as to the effectiveness of the work you describe in the opening pages of your statement. If you were not only to make these previous reports public, but also on a regular basis make them available to reporters and the general public, I think it might do much to——

Mr. COOKE. In that regard, I was heartened by the comments of the Chairman on our good efforts with particular regard to the inspections, and I think perhaps if you could in turn reassure the general public pursuant to your continuing oversight responsibilities——

Mr. BASKIR. With respect to the regulations, the DOD regulations and subsidiary regulations and interpretations, there was a problem back in 1970 of certain rules and regulations being issued by the Department or by the Army to limit surveillance, and then certain classified exceptions were issued contemporaneously which were not made available. Would the Department agree or see any difficulty in publishing, let's say in the Federal Register or some generally accessible public record, the regulations and all subsequent changes and agreeing that no changes would be made except those made publicly?

Mr. COOKE. I am not aware of any classified exceptions to the policies enunciated in DOD Directive 5200.27——

Mr. BASKIR. I am referring to something that happened before that regulation was issued.

Mr. COOKE. I can't specifically identify the issue to which you are referring. I will note, however, that each of the military departments have published regulations binding upon their members implementing the provisions of DOD 5200.27, and a typical example, if you will bear with me a minute, is the Army promulgation of the same subject as the DOD directive, which states that this Army regulation is the "sole authority" for the implementation of 5200.27 in effect.

In other words, if you are inquiring about whether we would object to the publishing of the service regulations implementing 5200.27, then our answer is we would have no objections whatsoever.

Mr. BASKIR. Would the Department agree that no exceptions or changes or modifications of these regulations in the future would be made by any classified regulations, that all changes would be made in an unclassified nature?

Mr. COOKE. Yes.

Mr. BASKIR. Thank you.

Senator ERVIN. I think that the reason that you and I have so much difference about this bill is illustrated by the statement on page 13 of your transcript which says "we find no language in the bill which would permit us to investigate threats made to officials of the military departments". You evidently construe the law to prohibit everything it doesn't permit. Under that construction, you might construe this law to prohibit marriages between a military man and civilian because it doesn't specifically authorize them to get married.

Mr. ANDREWS. Mr. Chairman, I was here in 1971 when we discussed what could be done and what could not be done in this area.

As I recall it, the distinguished Chairman pointed out rather forcefully, at the time that in this area we could not act unless we had authority. It seems to me here we are being given a bill which says we shall not act and it makes it a crime to act. So therefore, we are very wary of trying to write in or read into the bill exceptions which I think we are both in agreement should be recognized.

You see those exceptions in the bill. We do not.

Senator ERVIN. Well, according to the interpretation Mr. Cooke has put on it, this bill prohibits anything it does not expressly permit. If you have to draw a bill like that, it would be about twice the length of the Encyclopedia Britannica and the U.S. Code all in one.

I don't think this bill prohibits anything except collecting information about the beliefs and the associations and the political activities.

Mr. ANDREWS. May I ask the Chairman a question for purposes of clarification?

Senator ERVIN. Yes, sir.

Mr. ANDREWS. Do the words "activities and associations", are they related to political activities or separate and apart?

Senator ERVIN. Yes.

Mr. ANDREWS. So the word "political" characterizes beliefs, activities, and associations, fine.

Now, do the reports that we would maintain, are those reports obtained as a result of our investigations or are they any reports that we might receive outside of our investigative efforts?

Senator ERVIN. Those are the things that the Army receives, or that they gain by using the military to exercise surveillance over civilians not connected with the Army for the purposes of finding out what their beliefs are, what their associations are, and what their political activities are, which is none of the business of the Defense Department.

Mr. ANDREWS. So the chairman reads it as such reports as we obtain as a result of an investigation?

Senator ERVIN. Yes. I don't think it prohibits you from reading the Encyclopedia Britannica or the Bible or the newspaper.

Mr. ANDREWS. We are comforted by your interpretation.

We would suggest the bill include a provision which contain words of such a character. The problem could be met by adding "compiled as a result of such investigation" after the word "records".

Senator ERVIN. I think that would clarify it and I appreciate your suggestion. Mr. Snider.

Mr. SNIDER. Mr. Cooke, you have objected to the language of S. 2318. I wonder if you would object if we just dropped that language and substituted the language of DOD directive 5200.27 and made that a statute?

Mr. COOKE. We obviously would find that considerably more acceptable. There are still drafting problems, and I repeat the offer I made—I think there will be drafting problems in drafting that as a criminal statute.

May I ask my representative from the General Counsel's office to further comment on that proposal?

Mr. ANDREWS. The military departments, the civilian lawyers, I might add, assembled to determine whether this could be done. The directive language can be written in such a way as to give adequate guidance. When you translate that into a law, particularly into a criminal law, we had definite problems in defining terms in making sure that what we wrote specified the crime clearly.

We have some ideas and I think that the chairman's comments very recently about how he reads the bill would aid us considerably in narrowing the prohibition and thus avoiding a longer list of exceptions.

Mr. SNIDER. Are you saying that the DOD directive is not clear enough?

Mr. ANDREWS. I think the DOD directive is quite clear enough for administrative management purposes, but it is quite a different thing to write a criminal statute.

Mr. SNIDER. Does the DOD directive make an exception for Who's Who, for having a copy of Who's Who?

Mr. ANDREWS. I am sure it does. Because it talks about investigative reports and what may be collected and what may be retained. I think with the chairman's interpretation, we don't have a problem.

Mr. SNIDER. The directive does not apply outside of the United States and its territories and possessions. That has been established. Why was it so restricted?

Mr. Cooke. I believe the answer is in my statement, contained in my written statement and shows the considerations which the DIRC considered in approaching this problem, and if I may find it again——

Mr. Snider. Well, we have that.

I would just like to know if that doesn't mean military intelligence units stationed abroad can conduct surveillance of Americans traveling abroad without any restriction other than just the local command regulations.

Is there any other restriction, either on the manner they collect the information or——

Mr. Cooke. There are any number of restrictions, including status of forces agreements in each of the countries, understandings with the sovereign law enforcement organization of those countries, and let me state flatly that military intelligence units, wherever located, are not conducting investigations of the political beliefs of American citizens or indeed anyone else on that basis alone.

The investigations which must be authorized—and I would note that there is no authority to conduct an investigation unless it is directed—are investigations where there are prospects of immediate and direct harm to military personnel, military property, or military installations.

Now, it is a regrettable fact that our forces overseas are targeted by hostile intelligence operations, by terrorist organizations. It is also a regrettable fact that perhaps in some instances, these efforts may be aided by U.S. nationals within or without the services.

Let me point out it is a serious matter. This is a picture of a bombing of a barracks in Heidelberg, Germany. There was about $100,000 worth of damage. It was done by a terrorist organization. I don't think in this particular case there were any U.S. nationals involved, but three Americans lost their lives in this. Our forces are targeted and they have to take adequate steps to protect themselves, and on that I think you will all agree.

What I am saying is that, again, a military counter-intelligence organization certainly does not investigate any U.S. citizens solely on the basis of their political beliefs in those areas.

Mr. Snider. Is there any requirement that Americans be remotely connected with a foreign government or its investigative agents before he can be placed under surveillance overseas?

Mr. Cooke. This would depend solely on the facts of the case. I would say that if an American citizen was a member of an identified terrorist organization, he would be, and must be a legitimate interest to our counter-intelligence organization, not because of his political beliefs.

Mr. Snider. Do you consider the Concerned Americans in Berlin to be a terrorist organization?

Mr. Cooke. I am not familiar with the facts in the case. As I pointed out, this matter is before the courts and will be expressly litigated there.

Mr. Snider. I have no more questions, Mr. Chairman.

Senator Ervin. Thank you very much.

Mr. COOKE. Mr. Chairman, may I make just several observations?

I regretted seeing the newspaper headlines this morning talking about "plumber" activities. The word "plumber" these days is a word which conjures up, as you know, illegal or clandestine acts. I am referring specifically to the responsibilities of the Defense Investigative Service and other Defense agencies in seeing if any of our people have leaked classified information.

I would point out these investigations are required by Executive Order 11652, section 13 (b), which requires the head of each Department take prompt and stringent administrative action against any officer or employee of the United States determined to have been responsible for any leaks or disclosure of any national security information or material in a manner not authorized by or under this order through the National Security Council.

Where a violation of criminal statute may be involved, the Department should refer any such case promptly to the Department of Justice.

I would like to point out our investigations of unauthorized leaks are investigations of Department of Defense personnel, military or civilian. They are done by interviewing these people. There is no covert infiltration or clandestine activity involved, rather there is an organized and recognized and highly essential activity.

Senator ERVIN. Well, I didn't write the headline for the newspapers. The subcommittee had been informed the Defense Investigative Service has undertaken three, "plumber", activities. I furthermore proceeded to use one of those new fancy words to describe the special operations permitted under the DOD directive.

I didn't use the word that Mr. Huston used in his plan: "surreptitious entry" or burglary. I used this very fancy word that is used in the directive, "covert penetration."

Mr. ANDREWS. Mr. Chairman, you may not write headlines, but you make them.

Mr. COOKE. The Defense Investigative Service, like all our services, is bound by the prohibitions and strictures of 5200.27 where they conduct anything outside the Department. But these investigative security leaks have been going on, as you know, sir, for literally many years.

Mr. BASKIR. Might the investigation involve interrogation or other kinds of inquiries with respect to nonaffiliated individuals?

Mr. COOKE. Our investigations of security leaks are limited only to people affiliated with Department of Defense to carry out the provisions of the executive order.

Should there be something beyond that, we refer the case to the Department of Justice.

Mr. BASKIR. Any investigation of a leak of military classified information, under the directive would that be barred from reaching persons not affiliated——

Mr. COOKE. 5200.27, yes, it would, emphatically. As a matter of fact, our investigations do not and have not involved people not affiliated with the Department.

Mr. BASKIR. I have no further questions.

Senator ERVIN. Well, thank you gentlemen very much.

Mr. COOKE. Mr. Chairman, it was a pleasure to appear before you.

Thank you.

Senator ERVIN. Counsel will call the next witness.

Mr. BASKIR. Mr. Chairman, our next witnesses are Mr. Eastman Birkett, attorney, Association of the Bar of the City of New York; accompanied by Mr. Barry Mahoney, attorney, Association of the Bar of the City of New York.

Senator ERVIN. I want to welcome you to the subcommittee and express our appreciation for your being willing to appear and giving us the benefit of your views with respect to this proposed legislation.

TESTIMONY OF EASTMAN BIRKETT, ATTORNEY, ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK; ACCOMPANIED BY BARRY MAHONEY, ATTORNEY, ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

Mr. BIRKETT. Mr. Chairman, it is a pleasure to be here in two capacities, both in my capacity representing and reading the statement of Cyrus Vance, and also in my capacity as a member of the Civil Rights Committee of the Association of the Bar of the City of New York.

As the Chairman knows, Mr. Vance, formerly Secretary of the Army, was Under Secretary of Defense under Secretary McNamara and special representative of President Johnson during the Detroit Riots of 1967 and advisor to Mayor Washington during the riots, following the death of Martin Luther King in 1968. He is currently the nominee for President of the Association of the Bar of the City of New York as well.

Senator ERVIN. Well, I can certainly recommend him without any hesitancy for election to that position because I knew Mr. Vance very well when he was here in Washington, and he is a very fine and talented gentleman.

Mr. BIRKETT. He particularly asked me to convey his kindest regards to you. His statement follows:

PREPARED STATEMENT OF CYRUS R. VANCE, READ BY EASTMAN BIRKETT, ATTORNEY

Mr. Chairman and members of the subcommittee. I deeply regret that a court commitment prevents me from appearing personally before you today to testify in support of the proposed legislation. Mr. Eastman Birkett, a former partner of mine and currently a member of the Civil Rights Committee of the Association of the Bar of the City of New York, has kindly agreed to read this statement on my behalf.

With respect to the specific provisions of S. 2318, I have reviewed the bill and the statement of Mr. Barry Mahoney made on behalf of the Association of the Bar of the City of New York. I wholeheartedly concur with Mr. Mahoney's statement as well as the report of the association on civil rights, dated May 10, 1973, entitled "Military Surveillance of Civilian Political Activities: Report and Recommendations for Congressional Action"; and believe that the enactment of legislation along the lines of the proposed bill is an essential goal. I should like to add the following comments in amplification of the comments appearing in paragraph 7 on page 22 of Mr. Mahoney's statement. These comments arise out of my experience with the riots in Detroit, Michigan and Washington, D.C. in 1967 and 1968 and very helpful discussions with Professor Christopher H. Pyle of the John Jay College of Criminal Justice.

I recommend that a new subsection be added to section 1386 which would assure the Armed Forces that the ban on surveillance and datakeeping would not hamper advance reconnaissance and onsite observation essential to the conduct of antiriot operations. The bill should guarantee that packets of city maps, data on bridge loads, possible approach routes, bivouac sites, possible headquarters locations, et cetera and the names and offices of local officials could still be gathered.

Further, I believe, nothing in the statute should bar the Armed Forces from sending observers to the scene of riots when requested by the Attorney General of the United States to collect the necessary planning information and to advise the Justice Department and Presidential representatives of the military aspects of the situation.

In addition, the statute should permit the dispatch of liaison officers to local police headquarters, precinct stations, and National Guard headquarters for the purpose of monitoring the development of a riot for which troops have been alerted, and keeping military commanders informed of the kinds of tactical information they would need to deploy troops where they would do the most good.

Also, if Federal troops are committed by the President pursuant to 10 U.S.C., Sections 331–334, the Armed Forces inevitably would have to collect some information concerning individuals active in the riot. The legislative history should make it clear that this information collected in the course of reporting instances of violence and detention of individual rioters is not prohibited by the statute. The statute should provide, however, that all such information not turned over to civil law enforcement authorities for law enforcement purposes must be destroyed within 60 days of the withdrawal of troops.

Finally, the legislative history might also note that the statute is not intended to restrict the preparation of afteraction reports or military histories of antiriot operations.

In closing, I should like to take this opportunity to thank the subcommittee for the vitally important work it has done and is doing in this and other areas in the field of civil rights.

That is the end of Mr. Vance's report, sir.

Senator Ervin. I think he has made some very valuable suggestions to the subcommittee, very helpful.

Mr. Birkett. I would like to add for myself as a former chairman of the legislative committee and a present member of the civil rights committee my complete agreement with the statement of Mr. Vance as to importance of the work of this committee, and to reiterate how much we have appreciated our relationship with your committee and you personally over the years.

We have enjoyed the interchange very much.

Senator Ervin. Thank you very much. I think Mr. Vance's recommendations raise points which certainly require the most serious thoughts of the committee in marking up this bill. They are very helpful.

Mr. Birkett. I would like to say a word about Mr. Barry Mahoney, who will give his statement on behalf of the Association of the Bar which the civil rights committee completely endorses.

He was formerly a New York attorney, and he's recently moved to Denver where he is doing research on pretrial release and the right to a speedy trial. He was a principal author of the 1973 report of the Civil Rights Committee and has maintained his membership in the Assocation of the Bar, I am pleased to say, from Denver and is still participating in its affairs, as you can see.

TESTIMONY OF BARRY MAHONEY, ATTORNEY

Mr. Mahoney. Mr. Chairman, I am most appreciative of the opportunity to appear here before you today on behalf of the Association of the Bar of the City of New York.

Over the years, this subcommittee has done a remarkable job in bringing problems of government intrusion into the lives of individual citizens to public attention. The subcommittee's work in the area of military surveillance of civilian political affairs is an outstanding example of its efforts. We thank you for inviting us to testify on this subject, and we hope that we may make some contribution to the formulation of constructive legislation in the area.

As you know, I have prepared a written statement for presentation to the subcommittee. However, rather than read that statement in full, I would like to submit it—and with it, the 1973 report by the Bar Association's Committee on Civil Rights entitled, "Military Surveillance of Civilian Political Activities: Report and Recommendations for Congressional Action"—for inclusion in the record of these hearings.

Senator Ervin. The committee will have your written statement printed in full in the body of the record and will receive the report as an exhibit.

[The material referred to follows:]

Prepared Statement of Barry Mahoney, on Behalf of the Association of the Bar of the City of New York

Mr. Chairman and Members of the Subcommittee, I am most appreciative of the opportunity to appear here before you today on behalf of the Association of the Bar of the City of New York. Several months ago, the Association published a report of its Committee on Civil Rights entitled "Military Surveillance of Civilian Political Activities: Report and Recommendations for Congressional Action." I would like to present that report to the Subcommittee, and to ask that it be made a part of the record of these hearings.

Our report had three central purposes: (1) to review the historical background and the status, as of mid-1973, of the controversy over military surveillance of civilian political activities; (2) to outline the principal legal considerations relevant to the problem; and (3) to set forth our views with respect to possible Congressional action. Rather than review the report in detail here, I would like to simply summarize its substance and to make a few comments on the bill now before you (S. 2318) in light of our recommendations.

A. THE NATURE AND EXTENT OF THE PROBLEM

In reviewing the history and recent scope of military surveillance operations, our committee relied heavilly on the record established by this Subcommittee at its 1971 hearings and on the documentary analysis done by the Subcommittee's staff. We believe that the record is a shocking one—one which points clearly to the need for legislation to curb abuses of the sort which took place during the period from 1967 through 1970.

Army surveillance activities during this period had a massive sweep. The scope of these activities has been documented in considerable detail by this Subcommittee and by others, but it may nevertheless be useful to recall some of the salient features of the surveillance program:

1. A great number of widely disparate groups, covering the full range of the political spectrum, were subject to Army surveillance—including, for example, the American Civil Liberties Union, the John Birch Society, the Southern Christian Leadership Conference, the NAACP, and the League of Women Voters.

2. Files were also kept on a large number of private citizens and public officials. These dossiers often included data on the private and personal affairs of citizens—on their financial affairs, sex lives, and psychiatric histories, for example—as well as on their activities in connection with political organizations.

3. Although most of the data collected on groups and individuals consisted of matters of public record, information was also obtained from private institutions—sometimes through covert operations. Indeed, former Assistant Secretary of Defense Robert Froehlke has testified before this Subcommittee that it was "highly improbable" that many of the requirements for information contained in the Army's 1968 civil disturbance information collection plan could have been met in any way other than through covert collection means.

4. In quantitative terms, an enormous amount of information, on a very large number of individuals, was collected and stored. The Subcommittee's staff was probably being conservative in estimating that in 1970 Army Intelligence had reasonably current files on the political activities of at least 100,000 individuals unaffiliated with the armed forces.

5. The Army's data system, as of 1970, had the technical capacity for cross referencing organization, incident, and personality files—and thus for rapidly producing lists of citizens by name, address, ideology, political affiliations, and involvement in particular political activities.

6. Perhaps most serious, from the standpoint of persons concerned with maintaining government under law, the surveillance programs of the 1967–1970 period apparently developed not only in the absence of legislative authorization, but without the knowledge or approval of senior civilian officials in the Department of Defense. As this Subcommittee noted in its report on the subject last year, the failure of such officials to know of the program represents a serious breakdown of civilian control over the military.

What has happened since the existence of this massive Army surveillance program first came to light in 1970? As of mid-1973, when our committee issued its report, it appeared from all counts that the scope of military surveillance activities had been greatly reduced from what it had been during the 1967–1970 period. However, the question of the extent to which these activities are currently being undertaken is probably one which only those in charge of such operations can answer.

To be sure, the Department of Defense has issued detailed regulations which sharply limit the scope of surveillance operations. But even if these regulations are being followed, a number of serious legal and practical issues remain. For one thing, the Defense Department's official position, ever since the existence of the surveillance program first came to public attention in 1970, has been that the widespread surveillance activities carried on during the

1967–1970 period, even if not "appropriate" were nontheless "lawful". Implicit in this position is a reservation by the Department of Defense of an alleged right to resume such activities whenever the Department deems it appropriate to do so.

Moreover, the regulations issued by the Department and by the various branches of the armed forces still leave considerable room for surveillance activities to be undertaken by the armed forces. For example, DoD Directive 5200.27 contains a provision permitting infiltration of citizen organizations and observation of private meetings when such surveillance has been given prior approval by the Secretary of Defense or his designee. And even the requirement of obtaining such prior approval does not apply when, in the judgment of the local commander, "the threat is immediate and time precludes obtaining prior approval." What constitutes such an emergency is implicitly left exclusively to the military authorities to determine. The DOD Directive also apparently permits surveillance of individuals, and of groups which do not constitute an "organization" to be undertaken even without the prior approval of the Secretary or his designee, in furtherance of the missions to protect "DoD functions and property" and "ensure personnel security." These are provisions which can be read very broadly—so broadly, indeed, as to render the prohibitory language in the directive almost meaningless.

Finally, while the DoD directives referred to in our report are not classified, there is nothing to ensure that future directives dealing with the scope of domestic intelligence operations would be unclassified. Indeed it is worth noting in this connection that during the summer of 1970—even as the unclassified DoD regulations were being drafted and published—secret plans for extensive monitoring of civilian political activities were apparently being formulated at top levels of the executive branch of the government. The plans apparently anticipated eventual participation of military agencies—including the Defense Intelligence Agency, the National Security Agency and the military intelligence agencies.

We do not mean to minimize the significance of the steps taken by the Defense Department and the armed services to limit surveillance activities. The regulations that have been promulgated are laudable steps in the right direction. But they may be changed at any time, and even as presently written they still leave room for an unjustifiably wide range of monitoring activities to be conducted by military personnel. We believe that the area is one in which Congressional legislation is appropriate and desirable. Before turning to a discussion of what we feel such legislation should contain, however, let me briefly discuss our conclusions with respect to some of the principal legal issues involved.

B. THE LEGAL CONSIDERATIONS

In reviewing the state of existing law with respect to the problem of military surveillance of civilian political activities, our committee focused on three questions:

First, to what extent, if at all, is such surveillance authorized under existing law?

Second, what constitutional rights have been—or might in the future be—infringed or jeopardized by military surveillance operations?

Third, insofar as military surveillance operations may infringe constitutional rights or be otherwise unlawful, what remedies presently exist?

1. The Question of Authority for Surveillance Operations

In taking the position that the military surveillance operations conducted during the 1967–1970 period were not unlawful, Defense Department officials have recognized that neither the Constitution itself nor any federal statutes explicitly authorize such monitoring of civilian political activities. They have argued, however, that such activities are "necessary" or at least "appropriate" if the armed forces are to be adequately prepared to respond to presidential orders for deployment of troops in instances of domestic violence. This sort of argument can, of course, be used to support almost any sort of executive branch data gathering. An infinite range of contingencies can be imagined, and there are many kinds of information which it would doubtless be very useful for a Chief Executive or his advisers to have in order to deal with any one of them. But under our Constitution, the government is not free to gather whatever information a President or his advisers think might be useful or to use whatever means of gathering information might seem convenient. The rights of individuals must be taken into account. So, too, must the statutes and constitutional provisions which grant authority to use troops in situations involving domestic violence, and which impose constraints upon the use of troops for domestic purposes.

With respect to the question of legitimate authority for undertaking military surveillance of civilian political activity, three points seem particularly critical:

(1) The only statutes which explicitly authorize the use of armed forces in connection with domestic violence (10 U.S.C. §§ 331–333) clearly contemplate their use only as a back-up force in specific situations where illegal overt acts amounting to serious rioting or insurrection have already taken place and civilian authorities have been unable to restore order. Indeed, these statutes are part of a chapter of the United States Code which is entitled "Insurrection." The chapter contains a statutory requirement that the President, whenever he considers it necessary to use armed forces under the chapter, must issue a proclamation ordering the "insurgents" to disperse. Read in context, the provisions of this chapter clearly provide no basis for sweeping domestic intelligence operations. Rather, they indicate that use of the armed forces in domestic affairs is a "last resort" measure to be employed only by Presidential directive, only for the limited purpose of restoring order when state and local authorities have been unable to do so, and only when certain specified conditions have been met.

(2) Other federal statutes, notably the Posse Comitatus Act, reflect the same policy. The Posse Comitatus Act has been amended several times since it was first enacted in 1878, but its basic thrust—prohibiting the armed forces from assisting local law enforcement officials in carrying out their ordinary duties—has remained constant. Its clear import is that federal troops can be used in connection with civil disorders only pursuant to the provisions of 10 U.S.C. §§ 331–333, and then only when the President has issued the proclamation required by 10 U.S.C. § 334.

(3) As for authority for the use of troops that may be derived from the constitution itself, independent of any statute, we readily acknowledge that the law in this area is somewhat murky. However, the few Supreme Court cases dealing with the scope of the President's authority as Chief Executive and Commander-in-Chief make it clear that his authority is not unlimited even where national security is concerned. In the famous *Steel Seizure* case of 1952, for example, the Supreme Court emphatically rejected the idea that the President's Article II powers authorized seizure of the nation's steel mills—even to avert a crippling steel strike that might have seriously jeopardized the national defense effort during the Korean War—in the absence of statutory authority for such a seizure. And only two years ago, in *United States* v. *United States District Court*, the Court rejected a claim by the Government that warrantless electronic surveillance of citizens suspected of subversion could be undertaken on the basis of the President's power to protect the national security. Justice Powell's opinion for the Court made it clear that First and Fourth Amendment values had to be taken into consideration, and that surveillance in national security cases was subject to Fourth Amendment requirements of judicial approval prior to initiation of a search or surveillance. By analogy, it seems clear that there is no broad constitutional authority for the President—much less subordinate officials in the Defense Department—to authorize domestic surveillance operations in the absence of clear statutory authority to do so, and without regard to the constitutional rights of the persons subjected to such surveillance.

2. The Rights at Stake

Defenders of past military surveillance operations have tended to stress the right of society to protect itself from insurrection and domestic violence. They have argued, in essence, that a compelling governmental interest in preventing domestic violence, or in being able to rapidly suppress such violence when it breaks out, justifies any "incidental" infringement of constitutional rights which may have occurred.

We readily acknowledge a governmental interest in being able to quell domestic violence expeditiously, but that is an interest which must be considered in light of the strong societal interest in the protection of individual rights. In our view, the sort of surveillance operations conducted by the Army during the 1967–1970 period seriously infringed the rights of free speech and association, the right to petition the government for redress of grievances and the right of privacy. For example, to the extent that electronic surveillance or physical searches may have been undertaken, it is clear that Fourth Amendment questions arise. To the extent that dossiers containing information about an individual's financial affairs, sex life, and psychiatric history were compiled without his knowledge and consent, it seems plain that a "zone of privacy" emanating from several constitutional guarantees has been invaded. To the extent that membership lists of organizations and communications between individual members of particular groups were made the subject of agent reports and files, it is apparent that what the late Justice Harlan referred to as "the vital relationship between freedom to associate and privacy in one's associations, grounded in the First Amendment," has been infringed.

As the Supreme Court has observed, First Amendment freedoms need "breathing space" in order to survive. They are in danger of being stifled when the government attempts to systematically keep track of persons seeking to exercise First Amendment rights in unpopular or unorthodox ways. The danger is particularly acute when the agency doing the monitoring is a part of the military establishment.

3. *The Question of Remedies*

In its 5–4 decision in *Tatum* v. *Laird*, the Supreme Court adopted a very narrow view of the issues of standing and justiciability, and thus avoided reaching the substantive question of whether the Army's surveillance activities violated the constitutional rights of individuals. Under the majority's holding in that case, the ordinary citizen is left without a remedy against excesses of the sort that took place during the 1967–1970 period, unless he can show direct injury to himself or the threat of imminent injury. The next effect of the holding appears to be that persons subjected to military surveillance are placed in a Classic "Catch–22" dilemma: if they are truly intimidated in the exercise of their constitutional rights, they are entitled to seek the aid of the court—but if they are in fact intimidated they are not likely to invoke their rights. The majority opinion thus makes it exceedingly difficult for lawless surveillance activities to be controlled.

In our opinion, the problem of controlling military surveillance activities is not one which can be left solely to the executive branch of the government. Three years ago, then Assistant Attorney General William Rehnquist—now Mr. Justice Rehnquist—testified before this Subcommittee that "self discipline on the part of the executive branch" would provide an answer "to virtually all of the legitimate complaints against excesses of information gathering." Whatever may have been the soundness of that observation three years ago, we now have abundant evidence that the self-discipline of the executive branch, in the area of surveillance activities, has not been great.

The problem is not simply one of venality on the part of high Administration officials. Even when top officials in a government agency wish to place a tight rein on surveillance activities and conscientiously take steps to do so, they may not succeed. Indeed, the difficulties which senior officials may face in seeking to curb surveillance excesses is illustrated by the problems which senior Defense Department officials encountered when they tried to curtail the Army's domestic intelligence activities following the initial disclosures about them back in 1970. They had great difficulty in ascertaining the full extent of the operations, and apparently were misled by lower echelon commanders on more than one occasion.

C. RECOMMENDATIONS REGARDING LEGISLATION

In our judgment, the problem of military surveillance of civilian political activities is one which is appropriate for Congressional legislation. Although we believe that existing law should be read as prohibiting broad surveillance and data collection activities of the sort that were undertaken during the 1967–1970 period, Administration spokesmen have taken a contrary view. And, as long as the narrow concept of standing delineated in *Laird* v. *Tatum* remains a guiding principle, litigation is not likely to be effective in curtailing such activities in the future.

In the absence of specific statutory prohibitions on such activities—prohibitions which are enforceable—there will as a practical matter be no obstacle to resumption of the kind of activities which were undertaken during the 1967–1970 period other than the "self-discipline" of the Executive Branch. The restrictions on such activities which the armed services have imposed on themselves by regulation do not resolve the problem satisfactorily. These regulations are helpful, but they still leave room for an unjustifiably wide range of monitoring activities to be conducted by military personnel. Moreover, the terms of the regulations (or the vigor with which they are enforced) may change at any time. The incumbent administration or a future administration could find it convenient to again adopt a domestic intelligence program, and could simply rescind or modify the present regulations—conceivably even by classified exceptions to them.

The importance of effectively prohibiting any future resumption of the sort of military surveillance activities which were carried on during the 1967–1970 period cannot be underestimated. Such activities invade the privacy of individuals and groups, inhibit free expression of beliefs and ideas, and in general exert a chilling effect upon the political activities of a free people. We believe that such activities exceed the constitutional and statutory authority of armed forces, violate or seriously jeopardize rights guaranteed by the First, Fourth, and Ninth Amendments to the Constitution, and cannot be justified on the basis of any compelling governmental interest.

Moreover, even assuming for the sake of argument that such activities are not unconstitutional, they are clearly undesirable as a matter of policy. Such activities would be difficult to justify no matter what governmental agency conducted them, because of their intrusions into individual privacy and the chilling effect which they exert upon political activities. They are especially repugnant to American ideals and traditions when undertaken by the armed services. It is directly contrary to our nation's long tradition of civilian control of the government for the military to be involved in such matters. To the extent that such surveillance activities must be carried on at all, it is far more appropriate that they be undertaken by a civilian arm of the government—and even then, of course, such activities should be subject to on-going Congressional scrutiny. If surveillance activities of any sort are justifiable and necessary, it is likely that a civilian agency will be able to conduct them more efficiently, less intrusively, less threateningly, and probably at less cost to the taxpayer, than military intelligence.

With these considerations in mind, our committee has recommended that Congress enact legislation generally prohibiting all military surveillance of civilian political activities and proscribing all collection and storage of information on the political or private affairs of individuals not directly affiliated with the armed forces. The basic principles which our committee felt should be incorporated in such legislation are these:

(a) The statute should, in broadly inclusive terms, bar members of the armed forces or persons employed by the armed forces from conducting surveillance whether overt or covert, of civilians. It should be carefully drawn to prohibit the compilation of dossiers or data banks containing information on the political activities or private affairs of individuals or organizations, but should not preclude the armed services from gathering "physical reconnaissance" data of the sort that would enable commanders to deploy troops efficiently when called upon pursuant to 10 U.S.C. §§ 331–333.

(b) The statute should provide for criminal penalties for violations, and should, in addition, include provisions for injunctive relief and for damages (including punitive damages and counsel fees).

(c) The statute should confer standing to sue upon any person or organization which has been the subject of the proscribed activities.

(d) The statute might well include a carefully drawn provision excepting from its proscriptions the collection of tactical information on the location, size, and actions of groups engaged in violent activities in areas which federal troops have been ordered by the President pursuant to 10 U.S.C. §§ 331–333. If so, it should also provide that any such activities should cease with the cessation of the violence and withdrawal of the troops and should in no event extend beyond 60 days without explicit Congressional approval.

With respect to the bill presently before the Subcommittee, S. 2318, we are, of course, wholeheartedly in favor of the bill's basic concepts of prohibiting military surveillance except in very limited circumstances, establishing criminal sanctions for violation of the restrictions, and providing civil remedies for persons who have been subjected to unwarranted surveillance activities. For the most part we believe the bill is well-drafted. We do, however, have some comments and suggestions to make with respect to several of its provisions, as follows:

1. The general prohibition of surveillance operations contained in the proposed new § 1386(a) appears to be directed only at the command level. It speaks, for example, of "an officer of the Armed Forces" who "employs" any part of the Armed Forces to conduct investigations, maintain surveillance, etc. We recognize that the phrase "officer of the Armed Forces" may be a term of art which covers enlisted men as well as commissioned officers, but we think it should be made clear that members of the armed forces of every rank—from private on up—are covered by the prohibition. In that connection, we would also suggest the use of a verb other than "employs"—perhaps "causes" would be better. In addition, it should be made clear that the prohibition also covers any non-military persons utilized for such purposes.

2. We believe that the language of the proposed Section 1386(a) should be revised in order to ensure that all of the areas that should be protected from military surveillance are covered by the general prohibition. Thus, we suggest that the language be amended to prohibit investigation into, surveillance over, or the recording or maintenance of information regarding "* * * the beliefs, associations, political activities, or other conduct or affairs of any persons * * *", etc.

3. We recognize that there may be grounds for permitting the armed services to monitor at least some kinds of conduct of military personnel. However, military intelligence should not have *carte blanche* to pry into the private affairs of the men and women in the armed services. Rather than exempting surveillance of members of the armed forces from the general prohibition, as § 1386(a) would now do, we would recommend covering this matter through a narrow and specifically worded exception which would be included in § 1386(b). For example, we see no objection to an exception which would authorize limited surveillance over military personnel where there is probable cause to believe that they may be engaged in espionage or other serious offenses.

4. The exception contained in the proposed § 1386(b)(2) appears to be far broader than necessary. As it presently reads, it would appear to leave room for military surveillance operations arising out of any incident "involving the destruction, damage, theft, unlawful seizure, or trespass of the property of the United States"—whether or not committed on a military installation or defense facility. At a minimum, the provision should be re-worded to confine the exception to surveillance directly related to the damage or unlawful seizure of Department of Defense property. Even then, we seriously question whether the investigation of criminal conduct occurring anywhere other than on a military installation is not more properly a function of a civilian agency.

5. We also question whether the exception contained in the proposed § 1386(b)(3) is necessary, though this is perhaps a closer question. We feel that civilian agencies would probably be better suited to conduct investigations of individuals to determine their suitability for employment by the armed forces or by a defense facility.

6. Particularly since the militia of the several states—the various National Guard units—are so closely linked to the regular armed forces (and, indeed, are heavily subsidized with federal funds), we fail to see the necessity for exempting members of the militia from the proposed prohibitions. Surveillence by the military is just as distasteful when conducted by personnel under the control of state authorities as when conducted by personnel under the control of federal authorities. We would delete the exemption contained in the proposed § 1386(b)(4).

7. We would modify the language now contained in the proposed § 1386(b(1), to provide that any surveillance activities undertaken by the armed forces when assigned by the President to the task of repelling invasion or suppressing rebellion, insurrection or domestic violence should be limited to collecting tactical information of immediate utility in quelling the disorder, should cease with cessation of the violence and withdrawal of the troops, and

should in no event extend beyond 60 days without explicit Congressional approval. We would also add language requiring that any information on individuals and groups gathered by the Armed Forces while assigned to such tasks be turned over to civilian law enforcement authorities or else destroyed within 60 days of the date that troops are withdrawn.

8. We would modify the wording of the proposed § 2691(a) to allow any person or organization that has been the subject of an act prohibited by 10 U.S.C. § 1386 to sue for damages. This would deal with the problem posed by the narrow concept of standing created by the Supreme Court's restrictive interpretation of the concept in *Laird* v. *Tatum.* We would also add language expressly authorizing persons who bring suit under the proposed § 2691 to recover punitive damages and counsel fees.

In conclusion, let me emphasize that we feel this Subcommittee has done a remarkable job over the years in bringing to public attention problems of unwarranted intrusion by Government into the lives of individual citizens. The Subcommittee's work in this area of military surveillance of civilian political activities is an outstanding example of its efforts. It is our hope—as we know it is yours—that these efforts will result in constructive legislation that will effectively curb surveillance excesses, while still allowing the armed services to obtain information that is essential for them to perform their legitimate functions.

Thank you for the privilege of allowing me to appear before you today.

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

MILITARY SURVEILLANCE OF CIVILIAN POLITICAL ACTIVITIES: REPORT AND RECOMMENDATIONS FOR CONGRESSIONAL ACTION

By The Committee on Civil Rights

INTRODUCTION

Domestic intelligence operations conducted by elements of the United States armed forces have raised serious problems involving rights of privacy, speech and association. Such problems have long been of concern to lawyers[1] and to members of this Association in particular.[2]

In January 1970, charges were made that the United States Army was engaged in widespread surveillance within the United States of the political activities of civilians.[3] Publication of the charges received considerable coverage in the press, and provoked inquiries from a number of Senators and Congressmen about the scope of the Army's domestic intelligence operations. During 1971, the Senate's Subcommittee on Constitutional Rights held hearings on the subject,[4] and since that time a number of bills aimed at limiting the scope of military surveillance have been introduced in Congress. To date, however, none of the bills has been reported out of committee.

High Defense Department officials have acknowledged that the charges of widespread domestic intelligence data gathering and storage were indeed accurate,[5] and the Department has issued detailed regulations which sharply limit the scope of such operations.[6] Significant legal and practical questions remain, however, for the official Department of Defense position appears to be that the widespread information collection activities undertaken during the 1967–70 period, even if not "appropriate," were nonetheless "lawful."[7] Manifestly, implicit in this position is a reservation by the Department of Defense of its alleged right to resume these activities whenever the Department deems it "appropriate" to do so.*

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* It should be noted that according to documents made public subsequent to compilation of the body of this report, secret plans for extensive monitoring of civilian political activities were apparently formulated at top levels of the executive branch of the government during the spring and summer of 1970. The techniques to be employed included electronic surveillance, mail coverage, and surreptitious entry. While referring to retention of restrictions on the use of military undercover agents, the plans apparently anticipated eventual participation of the military. A permanent committee consisting of the F.B.I., C.I.A., N.S.A., D.I.A. [Defense Intelligence Agency] and the military counterintelligence agencies was to evaluate information and "carry out the other objectives specified in the report." See "Text of Documents Relating to Domestic Intelligence Gathering Plans in 1970," *New York Times*, June 7, 1973, p. 36. The documents were subsequently made a part of the record at the hearings before the Senate Select Committee on Presidential Campaign Activities, in June, 1973.

The purpose of this report is threefold: (1) to review the historical background and current status of the controversy regarding military surveillance of civilian political activities; (2) to outline the principal legal considerations involved; and (3) to set forth our views with respect to possible Congressional action. Our principal conclusion is that Congress should enact legislation to prohibit all military surveillance of civilian political activities, except perhaps in certain well-defined circumstances where limited data-gathering may be justifiable.

I. *THE NATURE AND EXTENT OF THE PROBLEM*

A. *Military Surveillance Prior to 1967*

Although military surveillance of civilian political activities reached a peak during the three years following the riots in Newark and Detroit in 1967, such surveillance is by no means a recent phenomenon. The modern origins of the problem can be found in the expansion of military intelligence work at the outbreak of World War I, in response to German efforts at espionage and propaganda within the United States. By the end of the war, military intelligence had established a nationwide network of agents and civilian informers, who reported to the Army not only on suspected German spies and sympathizers, but also on pacifists, labor organizers, socialists, communists, and other "radicals."[8] The network remained in existence for several years after World War I, continuing to infiltrate civilian groups, monitor the activities of labor unions, racial groups and "left wing" political organizations, and occasionally harassing persons regarded as "potential troublemakers."[9] It was finally disbanded in 1924, and until the outbreak of World War II the military's domestic intelligence activities were conducted on a much reduced basis.[10]

The Federal Bureau of Investigation was the principal agency involved in domestic intelligence operations during the period between 1924 and 1940. With the outbreak of World War II, military intelligence operations were, of course, greatly expanded. Some elements of military intelligence again became involved in reporting on civilian political activities, mainly in an effort to counter suspected Axis "fifth column" attempts at subversion and sabotage.[11] The monitoring continued, on a much reduced scale and in a rather haphazard and sporadic fashion, during the Cold War period of the 1940's and 1950's. The primary domestic responsibility of military intelligence units during this period was the conduct of loyalty and security investigations involving persons working in the defense establishment, but the carrying out of these responsibilities sometimes spilled over into fairly extensive surveillance of civilians.[12]

During the early 1960's, the scope of domestic intelligence operations by the armed forces gradually began to expand. A number of factors were responsible for the expansion, including the general build-up of the defense establishment as the United States became increasingly involved in the war in Vietnam, the beginnings of the anti-war movement at home, repeated crises over desegregation (which actually led to the deployment of troops in Alabama and Mississippi in 1962 and 1963), and instances of protest against racial discrimination in cities in both the North and the South. Officials charged with responsibility for deployment of federal troops during these years expressed a need for better knowledge of the problems that might have to be faced.[13] Thus, for example, following the crisis in Birmingham, Alabama in May 1963, then Maj. Gen. Creighton Abrams (now Chairman of the Joint Chiefs of Staff), wrote that:

> "We in the Army should launch a major intelligence project without delay, to identify personalities, both black and white, develop analyses of the various civil rights situations in which they may become involved, and establish a civil rights intelligence center to operate on a continuing basis and keep abreast of the current situation throughout the United States, directing collecting activities and collating and evaluating the product. Based upon this Army intelligence effort, the Army can more precisely determine the organization and forces and operations techniques ideal for each." [14]

The extent of the actual collection of information on individuals and groups during the early and mid-1960's seems to have varied considerably from one military unit to another, depending upon how broadly the unit commanders interpreted vague directives to keep track of "subversive activities." [15] It was not until 1967, after large-scale riots had taken place in ghetto areas of Newark and Detroit, that truly extensive, systematic, domestic intelligence operations independent of the loyalty-security programs began to get underway.

B. *Formulation of the 1967–70 Surveillance Program*

In July of 1967, Federal troops were alerted for possible duty in connection with the riots which broke out in Newark and were actually committed to action in helping to quell the Detroit riots. In September, 1967, Cyrus Vance, who had been a special representative of the President in Detroit at the time of the riots there, filed an extensive "after-action report." Mr. Vance's report recounted the events which had taken place and summarized his conclusions with respect to planning for situations of domestic violence requiring the use of Federal troops which might arise in the future. Among other things, he recommended the reconnoitering of major American cities in order to prepare folders listing bivouac sites, possible headquarters locations, and similar items of information needed for optimum deployment of Federal troops when committed.[16] He particularly noted the utility of police department logs of incidents requiring police action, as indicators for determining whether a riot situation was beyond the control of local and state law enforcement agencies, and suggested that it would be helpful to develop a "normal incident level" curve as a base of reference. He also thought it would be useful to assemble and analyze data showing activity patterns during the riots in places such as Watts, Newark, and Detroit, in order to ascertain whether there were any typical "indicator" incidents or patterns of spread.[17] The Vance report did not suggest that the Army should collect data on personalities or organizations, but that is nevertheless what Army intelligence proceeded to do.

Extensive plans for expanding the Army's domestic intelligence operations and computerizing many of the files on civilian political activity were formulated during the fall and winter of 1967–68. A comprehensive Army civil disturbance plan was distributed to Army units in January, 1968, and was followed the next month by issuance of an "intelligence annex" to the plan which contained a list of elements of information to be collected and reported to the U.S. Army Intelligence Command. The annex singled out "civil rights movements" and "anti-Vietnam/anti-draft movements" as "dissident elements," and authorized military intelligence units to collect a far wider range of information than had been recommended in the Vance report of the preceding September.[18]

In May, 1968, following the riots touched off in a number of cities by the assassination of Dr. Martin Luther King, the Army issued an even broader "Civil Disturbance Information Collection Plan." The Plan described this mission of Army Intelligence in very broad terms:

> "To procure, evaluate, interpret and disseminate as expeditiously as possible information and intelligence relating to any actual, potential or planned demonstration or other activities related to civil disturbances, within the Continental United States (CONUS) which threaten civil order or military security or which may adversely affect the capability of the Department of the Army to perform its mission." [19]

The Plan contained a detailed listing of various kinds of information to be obtained and accorded different priorities to particular kinds of information. Some examples of kinds of information on "predisturbance activities" in local communities given high priority by the Plan are the following:

- presence of "militant outside agitators"
- increase in charges of police brutality, resentment of law enforcement
- known leaders, overt and behind the scenes
- plans, activities, and organization prepared by leaders
- friends and sympathizers of participants, including newspapers, radio, television stations, and prominent leaders
- efforts by minority groups to upset balance of power and political system
- purposes and objectives of dissident groups (including estimates of plans and objectives, capabilities, resources to be employed, coordination with other minority groups and dissident organizations)
- source and extent of funds, how funds are distributed, and general purposes for which funds are used
- organization of dissident groups (including location of functions and responsibilities, lines of authority, organization charts, and rosters of key personnel, for both the "high command" and the "subordinate elements" of the groups)
- personnel (including the number of active members, a breakdown of membership by ethnic groups, age, economic status, and criminal record, and biographic data on key members).[20]

C. *The Scope of the Data Collection, 1967–70*

Assistant Secretary of Defense for Administration Robert Froehlke later testified that the requirements of the civil disturbance information collection plan issued in May, 1968, reflected an "all-encompassing and uninhibited demand for information" which the Army was expected to meet.[21] As he pointed out, it was "highly improbable" that many of the requirements listed could be obtained by other than covert collection means.[22]

The Army's May 1968 plan was distributed to numerous Federal agencies and to top officials in each State government.[23] The Army itself, through its Intelligence Command, vigorously sought to implement the plan. The massive sweep of its surveillance activities has been extensively documented[24] and need not be reviewed in detail here. However, some particularly salient features may be noted to help illustrate the nature and extent of the program:

1. A great number of widely disparate groups were subject to Army surveillance. They covered the full range of the political spectrum and included, for example:

– The American Civil Liberties Union
– The American Nazi Party
– The John Birch Society
– The Socialist Workers Party
– CORE
– The NAACP
– The National Urban League
– The Southern Christian Leadership Conference
– The Mississippi Freedom Democratic Party
– The Revolutionary Action Movement
– Womens Strike for Peace
– The League of Women Voters
– Students for a Democratic Society.[25]

2. Files were also kept on a large number of private citizens and public officials. These dossiers often included data on the private and personal affairs of citizens as well as on their activities in connection with political organizations. Computer print-outs and other publications generated by the Army in the course of the 1968–70 operations included, among other things, comments about the financial affairs, sex lives, and psychiatric histories of many persons wholly unaffiliated with the armed forces.[26] Much of the information appears to have been unverified, sometimes consisting of nothing more than rumor or gossip.[27]

3. Most of the data collected on groups and organizations consisted of matters of public record—a great deal of it simply clipped from newspapers. However, information also was obtained from private institutions and, in some cases, through covert operations. Thus, for example, former members of Army intelligence testified at the 1971 Senate hearings that the Army's domestic intelligence activities had included:

– infiltration of undercover agents into Resurrection City during the Poor People's Campaign in 1968.[28]
– having agents pose as press photographers, newspaper reporters and

television newsmen, sometimes with bogus press credentials, during the 1968 Democratic National Convention in Chicago.[29]

– sending agents, enrolled as students, to monitor classes in the Black Studies program at New York University.[30]

– keeping card files, dossiers, and photographs on students and faculty at the University of Minnesota.[31]

– infiltrating a coalition of church youth groups in Colorado Springs, Colorado.[32]

4. An enormous amount of information was collected and stored. Some of it dated to as far back as World War I but most of it was collected during the 1967–70 period. The Army appears to have had more than 350 separate records storage centers containing files on civilian political activities.[33] One such center, the Fourth Army Headquarters at Fort Sam Houston, Texas, reported the equivalent of over 120,000 file cards on "personalities of interest."[34] Considerable duplication of files on individuals doubtless existed, but the staff of the Senate Subcommittee on Constitutional Rights is probably conservative in estimating that in 1970 Army intelligence had reasonably current files on the political activities of at least 100,000 individuals unaffiliated with the armed forces.[35]

5. At least two of the Army's data banks had the capacity for cross-reference among "organizational," "incident" and "personality" files.[36] The system thus had the technical capacity to produce correlations among persons, organizations and activities—*e.g.*, lists of citizens by name, address, ideology and political affiliation—virtually instantaneously.

6. The surveillance program seems to have developed a bureaucratic momentum of its own, and to have rapidly expanded without the knowledge or approval of civilian officials in the Department of Defense. Senator Ervin has cogently described the process:

> "In the midst of crisis, Pentagon civilians issued vague, mission-type orders which essentially gave intelligence officers a free hand in collecting whatever information they deemed necessary to the efficient conduct of civil disturbance operations. Subsequently, neither the Pentagon's civilian hierarchy nor the Congress had any routine means by which to review the appropriateness of those decisions until former agents came forward and blew the whistle in 1970.
>
> Meanwhile, the surveillance grew, as most governmental programs grow, by the quiet processes of bureaucratic accretion . . . [E]ach subordinate element in the chain of command expanded on the orders it received from above, while the traditional secrecy we have granted our intelligence agencies immunized each echelon from effective review by its superiors."[37]

D. *Efforts to Curb Surveillance Activities, 1970-Present*

The existence of a large-scale military domestic intelligence program first received widespread public attention early in 1970, with the publication of an article on the subject by former Army intelligence officer Christopher H. Pyle in the *Washington Monthly*.[38] In the three years that have passed since then, the scope of the program has, by all accounts, been greatly reduced. Serious issues remain, however, and to understand them it may be helpful to review the principal developments that have taken place in the three major arenas—the courts, the Congress, and the Department of Defense itself—in which the controversy has been conducted.

(1) *Litigation: Laird* v. *Tatum and ACLU* v. *Laird.*

The lawfulness of the military surveillance was challenged in two lawsuits filed shortly after the initial disclosures were made in 1970. The principal case is *Laird* v. *Tatum,* 408 U.S. 1 (1972). The plaintiffs in that case were a number of citizens and organizations, most of which had been identified in intelligence reports quoted in Captain Pyle's *Washington Monthly* article as having been subjects of Army monitoring activities. They alleged that the Army's domestic intelligence operations were unauthorized and overbroad, deterred political expression and dissent, and inhibited other persons from associating with them. They sought a declaratory judgment that the surveillance activity was unconstitutional or otherwise illegal, and asked for an injunction forbidding such activity in the future and requiring the destruction of all information acquired as a result of the monitoring.

The District Court for the District of Columbia dismissed the complaint in *Tatum* on the merits, without holding an evidentiary hearing.[39] The Court of Appeals reversed 2–1, holding that the plaintiffs' allegations presented a justiciable case under the "chilling effect" doctrine.[40] Judge Wilkey's opinion for the majority in the Court of Appeals noted particularly the combination of factors alleged to inhibit First Amendment rights, including the carrying on of activities beyond the statutory authority of the Army, the intrusive and inhibiting effects of such activities, and the fact that the Army —an immensely powerful institution—was the governmental agency involved in the activities.

The Supreme Court, in a 5–4 decision, reversed the Court of Appeals, accepting the Government's contention that the plaintiffs' claims of First Amendment violations did not present a justiciable controversy because plaintiffs failed to allege specific present objective injury or threat of specific future injury to themselves. Chief Justice Burger's opinion for the majority held that the plaintiffs' claims were barred by the:

> "established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as a result of that action."[41]

The majority opinion in *Tatum* did not review the allegations of the complaint in any detail, nor did it address the plaintiffs' contention that they could prove the injuries to themselves which they alleged if given an opportunity to do so at an evidentiary hearing. The Court also apparently accepted at face value the Government's contention that the surveillance operations had been greatly cut back, although there was evidence in the papers before the Court that the effect of the cut-backs was open to considerable question.[42]

Justice Douglas, in an opinion which Justice Marshall joined, vigorously dissented, observing that:

> "The act of turning the military loose on civilians even if sanctioned by an Act of Congress, which it has not been, would raise seri-

> ous and profound constitutional questions. Standing as it does only on brute power and Pentagon policy, it must be repudiated as a usurpation dangerous to the civil liberties on which free men are dependent. For, as Senator Sam Ervin has said, 'this claim of an inherent executive branch power of investigation and surveillance on the basis of people's beliefs and attitudes may be more of a threat to our internal security than any enemies beyond our borders.' * * *
>
> This case is a cancer in our body politic. It is a measure of the disease which afflicts us. Army surveillance, like Army regimentation, is at war with the principles of the First Amendment. Those who already walk submissively will say there is no cause for alarm. But submissiveness is not our heritage. The First Amendment was designed to allow rebellion to remain as our heritage. The Constitution was designed to keep government off the backs of the people. The Bill of Rights was added to keep the precincts of belief and expression, of the press, of political and social activities free from surveillance. The Bill of Rights was designed to keep agents of government and official eavesdroppers away from assemblies of people. The aim was to allow men to be free and independent and to assert their rights against government. There can be no influence more paralyzing of that objective than Army surveillance. When an intelligence officer looks over every nonconformist's shoulder in the library or walks invisibly by his side in a picket line or infiltrates his club, the America once extolled as the voice of liberty heard around the world no longer is cast in the image which Jefferson and Madison designed, but more in the Russian image. . . ."[43]

Justices Brennan and Stewart also dissented, basically adopting the position previously taken by the Court of Appeals on the justiciability question.[44]

Subsequent to deciding *Laird* v. *Tatum* in June, 1972, the Supreme Court has denied petitions to rehear the case and to disqualify Mr. Justice Rehnquist *nunc pro tunc* from participating in the case, on the ground that he had previously testified before the Senate Subcommittee on Constitutional Rights concerning the legality of the Army's surveillance activities.[45] The Court has also denied a petition for certiorari in *ACLU* v. *Laird* (formerly *ACLU* v. *Westmoreland*), a case which raised similar questions but had a somewhat more fully developed trial court record, thus allowing the dismissal of a complaint similar to the *Tatum* complaint to stand.[46]

The upshot of the Supreme Court decisions appears to be that the judiciary will not in the foreseeable future undertake any review of the scope of military surveillance operations in the absence of very specific allegations of imminent injury to particular plaintiffs. Even the majority in *Tatum* recognized, however, that the subject was one which warranted the concern of both the legislative and the executive branches of the Government.[47] As a practical matter, if recurrences of the 1967–70 surveillance program are to be prevented, it is in those branches that corrective actions will have to be undertaken. Some headway has already been made in both branches.

(2) *Congressional Action: Hearings and Proposed Legislation.*

In February and March of 1971, the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary held several days of hearings on the Army's monitoring activities. Chaired by Senator Sam Ervin of North Carolina, the subcommittee developed an extensive record consisting of testimony from high Defense Department officials, former Army intelligence agents, various individuals who had been subjects of monitoring activities, and academic analysts, and supplemented by extensive correspondence and documentary material.

Some of the factual data developed by the subcommittee on the extent of the domestic intelligence operations has previously been noted in this report.[48] In addition to eliciting this factual data, the hearings also helped to illuminate the constitutional and statutory problems raised by the surveillance activities—problems which had been addressed only tangentially in the court proceedings because the focus there was on questions of standing and justiciability.

The principal spokesmen for the Department of Defense were Robert F. Froehlke, then Assistant Secretary of Defense for Administration, and J. Fred Buzhardt, then General Counsel of the Department. Their position, as stated at the hearings, was that many of the monitoring activities had been "inappropriate" from a policy standpoint, but that they had not been "illegal."[49] Mr. Froehlke explained the Defense Department's position on the legal issues involved as follows:

> "Basic authority for the use of the Armed Forces in connection with civil disturbances is Article II, Section 4 of the Constitution and Sections 331, 332 and 333 of Title 10 of the United States Code.
>
> The civil disturbance information collection activities of the military services were all integrally connected to use or potential use of Federal troops under this authority. This information collection was obviously considered necessary and essential to the effective use of Federal military forces in connection with the widespread riots and domestic disorders occurring during this period . . .
>
> In order to carry out the President's order and protect persons and property in an area of civil disturbance with the greatest effectiveness, military commanders must know all that can be learned about that area and its inhabitants. Such a task obviously cannot be performed between the time the President issues his order and the time the military is expected to be on the scene. Information gathering on persons or incidents which may give rise to a civil disturbance and thus commitment of federal troops must necessarily be on a continuing basis. Such is required by Sections 331, 332 and 333 of Title 10 of the United States Code, since Congress certainly did not intend that the President utilize an ineffective Federal force."[50]

Mr. Froehlke maintained that none of the monitoring activities were prohibited by Federal or State law, arguing that:

> "Since no use of civil disturbance information was made or intended to be made that would result in any action to the prejudice of any individual or organization, it is difficult to perceive how the constitutional rights or even the right of privacy could be impaired by the collection of such information. Even were the rights of some individuals indirectly affected, however, the Supreme Court has repeatedly held that such rights of individuals are not absolute but are

> under certain circumstances subject to incidental limitations upon their exercise." [51]

The Defense Department's broad interpretation of the constitutional and statutory provisions relied upon as authority for the monitoring activities was vigorously challenged by Senator Ervin and others at the hearings, as was the assertion that no individual rights were infringed by the monitoring. Thus, for example, Rep. Abner Mikva (D.-Ill.), who had himself been a subject of some military surveillance activities, testified that:

> "The existence of arbitrary, widespread military surveillance of civilians—or even the popular belief that it exists—has a chilling effect on free speech. It discourages the kind of full, free and unrestrained exchange of ideas and viewpoints on which American democracy is based. More than any other, our guaranteed right to freely criticize our government and elected officials is what distinguishes us as a nation. It has long been a hallmark of totalitarian societies that only 'approved' persons could participate and that only 'acceptable' ideas could be heard. Military surveillance of civilian parties raises the spectre of such official 'approval' and 'acceptability' as some day being a requirement of American politics, as it has long been in the Communist countries we condemn * * *
>
> It would probably be going too far to say that the wide acceptance of military programs by the Congress has been influenced by the fear of covert military surveillance. But who can say that in future months or future Congresses there will be none who will have second thoughts about a vote on military affairs? Who can be certain that his judgment will not be swayed, perhaps even unconsciously, by the belief that he is being watched? Even the possibility of surveillance raises the spectre of subtle political interference. After all, who wants to be represented by a man who is so disreputable that the Army feels that the national security requires that his activities be monitored." [52]

In addition to holding hearings, the Subcommittee on Constitutional Rights has released a documentary analysis of a portion of the Army's files on civilian political activities[53] and is in the process of completing work on a detailed report on the surveillance operations. The subcommittee has thus contributed significantly to establishing a public record on the details of the program and the policy issues involved. Several Senators and Congressmen have also introduced bills aiming at halting or limiting military surveillance activities.[54]

(3) *Action by the Executive Branch of the Government: Issuance of New Regulations by the Department of Defense.*

Although the initial reactions of the Defense Department to the disclosure of the domestic intelligence operations were somewhat equivocal,[55] by March of 1971, the Department had issued a series of directives aimed at greatly reducing the scope of the data gathering and storage activities. The principal document, DoD Directive 5200.27[56] states that Department policy "prohibits collecting, reporting, processing, or storing information on individuals or organizations not affiliated with the Department of Defense except in those limited circumstances where such information is essential to the accomplishment of the Department of Defense missions outlined [in the directive]."[57] Exceptions to the general prohibition were made for the gathering of specified types of information for three missions: (1) protection of DoD functions and property; (2) investigations of armed forces personnel and persons applying for DoD positions or seeking access to "official information"; and (3) assisting in carrying out operations dealing with civil disturbances.

Certain kinds of activities were sharply limited or prohibited altogether by the directive. For example, one section of it provides, *inter alia,* that:

> "A. The acquisition of information on individuals or organizations not affiliated with the Department of Defense will be restricted to that which is essential to the accomplishment of assigned Department of Defense missions under this Directive.
>
> B. No information shall be acquired about a person or organization solely because of lawful advocacy of measures in opposition to Government policy.
>
> C. There shall be no physical or electronic surveillance of Federal, state, or local officials or of candidates for such offices.
>
> D. There shall be no electronic surveillance of any individual or organization except as authorized by law.
>
> E. There shall be no covert or otherwise deceptive surveillance or penetration of civilian organizations unless specifically authorized by the Secretary of Defense or his designee.
>
> F. No DoD personnel will be assigned to attend public or private meetings, demonstrations, or other similar activities for the purpose of acquiring information, the collection of which is authorized by this Directive, without specific prior approval by the Secretary of Defense or his designee. An exception to this policy may be made by the local commander concerned, or higher authority, when, in his judgment, the threat is direct and immediate and time precludes obtaining prior approval. In each such case a report will be made immediately to the Secretary of Defense or his designee.
>
> G. No computerized data banks shall be maintained relating to individuals or organizations not affiliated with the Department of Defense, unless authorized by the Secretary of Defense or his designee."[58]

The DoD directive—while clearly designed to limit substantially the scope of domestic intelligence under the May, 1968 "civil disturbance information collection plan"—has nevertheless been sharply criticized for being much too broad in terms of the surveillance it purports to authorize. It has been pointed out, for example, that the directive permits infiltration of civilian organizations and observation of private meetings, though such surveillance now requires specific prior approval by the Secretary of Defense or his designee except in "emergencies." Moreover, it apparently permits surveillance of individuals, and of groups which do not constitute an "organization," to be undertaken even without prior approval of the Secretary or his designee, in furtherance of the missions to protect "DoD functions and property" and ensure "personnel security."[59]

Even the Defense Department's critics agree that the recent directives are a step in the right direction. However, in addition to criticizing the directives as being over-broad in terms of the leeway they leave for surveillance and data-keeping operations, they note the new directives can be changed or rescinded at any time. Moreover, while the new directives are not classified, there is nothing which would ensure that future directives dealing with the scope of domestic intelligence operations would be unclassified. If the Defense Department's regulations do not provide sufficient protection against unwarranted intrusions into personal privacy and inhibitions upon freedom of speech and association, then legislation is needed. Before turning to that subject, however, we think it useful to outline the principal legal considerations which seem relevant to the problem.

II. *THE STATE OF THE LAW*

Legal considerations are, of course, not the only ones which must be taken into account in determining what sort of action, if any, Congress ought to take with respect to military surveillance of civilian political activities. Even if military surveillance of the sort described above could be regarded as entirely lawful, the fundamental policy question—to what extent, if at all, such activities should be permitted in the future—would remain to be resolved. However, points of law and the values they reflect are highly relevant to a consideration of that basic policy issue.

In reviewing the state of existing law in the area, the Committee has focused on three questions:

A. To what extent, if at all, is military surveillance of civilian political activities authorized under existing law?

B. What constitutional rights have been—or might in the future be—infringed or jeopardized by military surveillance operations?

C. Insofar as military surveillance operations may infringe constitutional rights or be otherwise unlawful, what remedies presently exist?

A. *The Question of Authority for Surveillance Operations*

Defense Department officials and other administration spokesmen have taken the position that the military surveillance operations conducted during the 1967–70 period were fully authorized by the Constitution and by statutory law.[60] Clearly, however, neither the constitutional provisions nor the statutes cited by these officials explicitly authorize surveillance of civilian political activities. Recognizing this, defenders of the military surveillance operations have argued that such operations are implicitly "necessary," or at least "appropriate," if the armed forces are to be aware of the possibility of domestic violence occurring at a particular place or time, and thus prepared to respond effectively to a Presidential directive issued pursuant to the constitutional and statutory provisions which authorize the use of troops in circumstances involving domestic violence.[61]

In addition, proponents of the surveillance operations have also maintained that such operations are necessary so that the armed forces can carry out their missions once they are dispatched by the President. Thus, the Justice Department has argued that the armed forces must have an ongoing intelligence gathering and analysis operation in order to enable it to act as a kind of "super police force" anywhere in the country:

> "When the National Guard or the U.S. Army moves in to restore order, their function is unquestionably in the role of a policeman; they simply accomplish what the police lack in number of men to do. They patrol streets, make arrests, regulate traffic, and try to calm down angry crowds just as local policemen would do. In performing those duties, they necessarily require some of the same tools as a police force, both to quell the disturbances and to perform an equally important function, the prevention of further disturbances.
>
> In order to carry out these duties as efficiently as possible, both the Army and the police must have an awareness of group tensions, what forces exist, the nature and size of discordant groups, and they must be capable of estimating the explosive possibilities of colliding philosophies.
>
> Clearly, the only way this information can be made available to the Executive Branch and the Army or the National Guard in time for it to be used effectively when those components are called upon to exercise their police responsibilities is for the information to be gathered and placed under current analysis ahead of time. And it must be gathered by the force which will ultimately use it, for there is never sufficient time between the disorder and the subsequent Presidential order sending the armed forces to the troubled areas for the police to transmit the information to the armed forces and the armed forces then to disseminate the information to the local commanders."[62]

The foregoing arguments in support of a putative authority for the armed forces to conduct wide-ranging domestic intelligence operations, while not without some pragmatic force, must be examined in the light of constitutional and statutory provisions which impose constraints on the activities of the armed forces and in the light of the existing case law. When thus scrutinized, it seems apparent that the scope of legitimate authority for the undertaking of such operations is not nearly as broad as Administration officials have claimed. Three points seem particularly relevant:

1. Federal statutes dealing with the role of the armed forces in domestic affairs indicate that Congress—consistent with the clear intent of the Framers of the Constitution[63]—has mandated that that role be a very limited one. The only statutes which explicitly authorize the use of armed forces in connection with domestic violence (10 U.S.C. §§ 331–333) clearly contemplate their use only as a back-up force in specific situations where illegal overt acts amounting to "insurrection" have already taken place and civilian authorities have failed to restore order. Indeed, these statutes are part of a chapter in Title 10 of the United States Code which is entitled "Insurrection," and are accompanied by a statutory requirement (in 10 U.S.C. § 334) that the President, whenever he considers it necessary to use armed forces under the chapter, must "by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time." Read in context, the provisions of 10 U.S.C. §§ 331–333 clearly provide no basis for inferring authority for sweeping domestic intelligence operations by the armed forces or for their use as any kind of "super police force." On the con-

trary, those provisions indicate that the use of the armed forces in domestic affairs is a "last resort" measure to be employed only by Presidential directive, only for the limited purpose of restoring order when state and local authorities have been unable to do so, and only when certain specified conditions have been met.

2. Other federal statutes reflect the same policy. Perhaps the most noteworthy is the "Posse Comitatus Act" (18 U.S.C. § 1385), which in its present form provides as follows:

> "Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years, or both."

Originally enacted in 1878, the Posse Comitatus Act was aimed at precluding the armed forces from assisting local law enforcement officers—*e.g.,* U.S. Marshals and local sheriffs—in carrying out their duties. The statute has been amended slightly over the years (*e.g.,* to include the Air Force as well as the Army), but its main thrust has remained constant. As Judge Dooling has observed, the Posse Comitatus Act may be regarded as expressing "the inherited antipathy of the American to the use of troops for civil purposes," and is "absolute in its commands and explicit in its exceptions."[64] Its import would seem to be that federal troops can be used in connection with civil disorders only pursuant to the provision of 10 U.S.C. § 331–333, and then only when the President has issued the proclamation required by 10 U.S.C. § 334.

3. While the extent of the President's constitutional powers to act in the national security area may be greater than those expressly delegated to him by statute, the range of these powers is a matter of considerable dispute and is clearly not unlimited. This area of law is a murky one, but the few Supreme Court cases dealing with the scope of the President's authority as Chief Executive and Commander-in-Chief make it clear that such authority is subject to both constitutional and statutory restraints. In what is perhaps the leading case, *Youngstown Sheet and Tube Co.* v. *Sawyer,*[65] the Supreme Court in 1952 emphatically rejected the Government's claim that the President's Article II powers authorized seizure of the nation's steel mills—even to avert a crippling steel strike that the President feared would jeopardize the national defense effort during the Korean War—in the absence of statutory authority for such a seizure. More recently, in *United States* v. *United States District Court,*[66] the Supreme Court in 1972 rejected a Government contention that warrantless electronic surveillance of individuals suspected by the Attorney General of engaging in subversive activities could be regarded as a lawful exercise of the President's power to protect the national security. Mr. Justice Powell's opinion for the Court, after noting that national security cases often reflected "a convergence of First and Fourth Amendment values not present in cases of 'ordinary' crime," held that domestic security surveillance was subject to "the customary Fourth Amendment requirement of judicial approval prior to initiation of a search or surveillance."[67]

In sum, claims of broad executive authority for domestic surveillance operations by the armed forces would appear to be in conflict with statutes prescribing a limited domestic role for the armed forces and with constitutional doctrine limiting the scope of executive authority in the national security area. Thus, even apart from the problems posed by possible infringement of the constitutionally guaranteed rights of individuals, there remains a substantial question as to whether, as a matter of law, the armed forces have any authority at all to monitor the political activities of civilians.

B. *The Rights at Stake*

Defenders of past military surveillance operations, while sometimes questioning whether individual rights were actually infringed by such operations, have tended to stress the right of society to protect itself from insurrection and domestic violence. They have argued, in essence, that a compelling governmental interest in preventing, or being able rapidly to quell, domestic violence, justified any "incidental" infringement of constitutional rights which may have occurred.[68] There are at least two major difficulties with this argument.

First, even assuming that some "domestic intelligence" information is essential in order to enable the armed forces to respond rapidly and effectively in a situation where they are called upon to do so, it is not essential that broad intelligence operations be carried on by the military. Where information on individuals or organizations involved in a particular riot is necessary to performance of the armed forces' limited "back up" function, it can be quickly transmitted to the appropriate commanders by civilian officials.

To the extent that intelligence operations must be carried on at all, it is more appropriate that they be carried on by a civilian agency, and that the agency's activities be clearly authorized by law and subject to continuing Congressional scrutiny. If surveillance activities of any sort are justifiable and necessary, it is likely that a civilian agency will be able to conduct them more efficiently, less intrusively, less threateningly, and at less cost to the taxpayer, than military intelligence. Judge Wilkey observed in *Tatum* that:

> "The compilation of data by a civilian investigative agency is thus not the threat to civil liberties or the deterrent on the exercise of the constitutional right of free speech that such action by the military is, because a civil investigative agency has no inherent power to act against an individual, that power always being subject to the well-defined restrictions of law and the approval of the courts. The military have no such restrictions; they have their own force (of incomparable power), they have their own commanders trained as soldiers not lawyers, the military's vast size may make civilian control of individual or small unit actions more theoretical than actual, and the military is not accustomed to operating within the restrictions of law and the processes of courts."[69]

Second, the argument of "compelling governmental interest" does not address the question of what constitutes only an "incidental" infringement of constitutional rights. The question is one of degree, of course, but there are strong empirical and legal arguments to be made for the proposition that the sort of surveillance operations conducted by the Army during the 1967–70 period seriously infringed the rights of free speech and association, the right to petition the Government for redress of grievances, and the right of privacy.

Several points bear particular mention:

1. The right to privacy is one which has been accorded increasing recognition, in society at large as well as in the courts, in recent years. Although a right to privacy is not explicitly mentioned in the Constitution, it is clear that the fundamental interest embraced in the concept of such a right—an interest in freedom from unwarranted governmental intrusion into the personal lives of individuals— is reflected in numerous constitutional provisions. As Mr. Justice Blackmun recently noted, the Supreme Court or individual justices have found at least the roots of the right in the First, Fourth, Fifth and Ninth Amendments, and in the concept of liberty guaranteed by the first section of the Fourteenth Amendment.[70] In a long line of decisions, the Court has recognized that a right of privacy—or, phrased differently, a guarantee of certain zones of privacy—exists under the Constitution.[71] The concept of the right to privacy covers a wide range of situations, and by the same token military surveillance activities of the sort described above may invade privacy in a variety of ways. To the extent that electronic surveillance or physical searches might be undertaken, for example, it is clear that Fourth Amendment questions are raised. To the extent that dossiers containing information about an individual's financial affairs, sex life and psychiatric history are compiled without his knowledge and consent, it seems plain that a "zone of privacy" emanating from several constitutional guarantees has been breached. To the extent that membership lists of organizations and communications between individual members or particular groups are made the subject of agent reports and files, it is apparent that what the late Justice Harlan referred to as "the vital relationship between freedom to associate and privacy in one's associations,"[72] grounded in the First Amendment, has been infringed.

2. The incursions into individual and associational privacy which inevitably result from widespread surveillance operations are particularly relevant to consideration of the First Amendment implication of such surveillance. As the Supreme Court has observed, First Amendment freedoms need "breathing space" to survive.[73] They are in danger of being stifled when the government attempts systematically to keep track of persons seeking to exercise First Amendment rights in unpopular or unorthodox ways. In cases arising in different contexts and involving a wide variety of different kinds of governmental activities—most of them far less intrusive or sweeping in scope than the military surveillance activities described above—the Court has held that the activities questioned are impermissible under the First Amendment because of the anxiety they are likely to generate among the citizenry and the inhibiting effect they are thus likely to have on the exercise of rights to free expression.[74]

3. As an empirical matter, there is a substantial body of social science data which indicates that governmental surveillance activities do in fact have seriously inhibiting effects upon the exercise of the First Amendment rights and liberties which are at the base of our nation's heritage.[75] This "chilling effect" on the activities of people is a product of several factors, including the power or authority of the agents conducting the surveillance, the anxiety which normally occurs in persons whose behavior is (or may be) being evaluated, the uncertainty or ambiguity of a surveillance situation, and fear of a

loss of relative anonymity. A person who feels that he might be the subject of surveillance can be expected to be anxious about possible consequences of the surveillance, to become apprehensive about engaging in activities which he feels would be disapproved, and perhaps to re-define his own political views because of the stigma which is attached to persons or organizations which are under surveillance because of their distinctive opinions.[76] Obviously, the greater the potential power of the surveillance agent and the more massive the surveillance operations, the more extensive and the more severe will be the chill. When the surveillance agent is the United States Army—or, indeed, any branch of the defense establishment—the power is great, the capacity for surveillance is enormous, and the danger of a chill is very substantial.

C. *The Question of Remedies*

At the 1971 Senate hearings, then Assistant Attorney General William H. Rehnquist expressed the view that "self-discipline on the part of the executive branch" would provide an answer "to virtually all of the legitimate complaints against excesses of information gathering."[77]

Unfortunately, there is abundant evidence that the self-discipline of the executive branch in the area of surveillance activities has not been great. The problem is not simply one of venality on the part of high Administration officials. Even when top officials in a government agency wish to place a tight rein on surveillance activities and conscientiously take steps to do so, they may not succeed. Indeed, the difficulty in doing so is illustrated by the problems which senior Defense Department officials encountered in seeking to curtail the Army's domestic intelligence activities following the initial disclosures about them early in 1970. They had great difficulty in ascertaining the full extent of the operations, and apparently were misled by lower echelon commanders with respect to both the details of the domestic intelligence program and the actual steps taken to destroy information which had been gathered and stored.[78]

In its decision in *Laird* v. *Tatum,* the Supreme Court rejected the idea that self-discipline on the part of the Executive Branch was a wholly adequate answer to complaints of overbroad military surveillance activities.[79] At the same time, however, by delineating a very narrow view of the issues of standing and justiciability, the opinion of the majority makes it exceedingly difficult for lawless surveillance activities to be effectively controlled. Under the majority's holding, a person can challenge such activities in court only if he can show direct injury or the threat of imminent injury.[80]

The net effect of the holding in *Laird* v. *Tatum,* appears to be that persons subjected to military surveillance are placed in a classic "Catch-22" dilemma: if they are truly intimidated in the exercise of their constitutional rights, they can invoke their rights and seek the aid of the court, but if they are in fact intimidated, then they are not likely to invoke their rights. Moreover, the decision wholly fails to address the problem of sanctions against lawless surveillance activities by members of the armed forces. Even if such activities do not actually violate the constitutional rights of individuals, they are *ultra vires* acts for which at present there appears to be no meaningful remedy.

III. *CONCLUSIONS*

1. Surveillance and data collection activities of the armed forces, of the

kind disclosed at the 1971 Senate hearings and described above in the body of this report, seriously infringe the constitutional rights of individuals and endanger the health of the body politic. Such activities invade the privacy of individuals and groups, inhibit free expression of beliefs and ideas, and in general exert a "chilling effect" upon the political activities of a free people. We believe that such activities exceed the constitutional and statutory authority of the armed forces, violate or seriously jeopardize rights guaranteed by the First, Fourth, and Ninth Amendments of the Constitution, and cannot be justified on the basis of any compelling governmental interest.

2. Even assuming, *arguendo,* that such activities are not unconstitutional, they are clearly undesirable as a matter of policy. Such activities would be difficult to justify no matter what governmental agency might conduct them, because of their intrusions into individual privacy and the chilling effect which they exert upon political activities. They are especially repugnant to American ideals and traditions when undertaken by the armed services. It is contrary to our nation's long tradition of civilian control of the government for the military to be involved in such activities, as both the majority and the dissenters in *Laird* v. *Tatum* recognized. To the extent that such surveillance activities must be carried on at all, it is far more appropriate that they be undertaken by a civilian arm of the government. In this respect we agree with Judge Wilkey, who observed in his opinion for the Court of Appeals in the *Tatum* case that:

> "It is highly important for the safety of the country that to the extent consonant with the performance of the military's mission a separation of sensitive information and military power be maintained, as a separation of match and powder. In an emergency or anticipation of an emergency the military power can be supplied the necessary information from civilian investigative agencies; these two ingredients, potentially dangerous when combined, can be put together by a responsible President and his Cabinet officers as the emergency demands. But to permit the military to exercise a totally unrestricted investigative function in regard to civilians, divorced from the normal restrictions of legal process and the courts, and necessarily coupling sensitive information with military power, could create a dangerous situation in the Republic."[81]

3. The restrictions on such activities which have been imposed by the armed services themselves, following disclosures about the operations in 1970 and 1971, do not resolve the problem. Although these restrictions (principally, the provisions of DoD Directive 5200.27) are laudable steps in the right direction, they still leave room for an unjustifiably wide range of monitoring activities to be conducted by military personnel. Moreover, the terms of the restrictive regulations (or the enthusiasm with which they are enforced) may change at any time. The incumbent administration or a future administration could find it convenient to again adopt a domestic intelligence program and simply rescind or modify DoD Directive 5200.27—conceivably even by a classified exception to it. Even if departmental regulations were narrowly drawn and not subject to classified exceptions, however, statutory sanctions would be preferable. There would seem to be less likelihood that military personnel would conduct unauthorized surveillance that is

proscribed by a statute with teeth in it than that they would violate a mere departmental regulation.

4. The area is one which is appropriate for Congressional legislation. Although we believe that existing law should be read as prohibiting broad surveillance and data collection activities of the sort described above, Administration spokesmen have taken a contrary view. As long as the narrow concept of standing delineated in *Laird* v. *Tatum* remains a guiding principle, litigation is not likely to be effective in curtailing such activities in the future. In the absence of an explicit statutory mandate to desist, there will as a practical matter be no obstacle to the resumption of the kind of activities which were undertaken during the 1967–70 period other than the "self-discipline" of the Executive Branch.

5. The Committee recommends that Congress enact legislation generally prohibiting all military surveillance of civilian political activities and proscribing all collection or storage of information on the political or private affairs of individuals and organizations not directly affiliated with the armed forces. The basic principles which the Committee believes should be incorporated in federal legislation are the following:

(a) The statute should, in broadly inclusive terms, bar members of the armed forces or persons employed by the armed forces from conducting surveillance whether overt or covert, of civilians. It should be carefully drawn to prohibit the compilation of dossiers and data banks, while at the same time permitting the kind of logistical reconnaissance recommended by Cyrus Vance in his September 1967 report on the Detroit riots.

(b) The statute should provide for criminal penalties for violations, and should, in addition, include provisions for injunctive relief and for damages (including punitive damages and counsel fees).

(c) The statute should confer standing to sue upon any person or organization which has been the subject of the proscribed activities.

(d) The statute might well include a carefully drawn provision excepting from its proscriptions the collection of tactical information on the location, size and actions of groups engaged in violent activities in areas to which federal troops have been ordered by the President pursuant to 10 U.S.C. §§ 331–333. If so, it should also provide that any such activities should cease with the cessation of the violence and withdrawal of the troops and should in no event extend beyond 60 days without explicit Congressional approval.

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May 10, 1973

FOOTNOTES

[1] See, *e.g.* the seminal article by Samuel D. Warren and Louis D. Brandeis, "The Right of Privacy," 4 Harvard Law Review 193 (1890).

[2] A decade ago, the Association of the Bar's Special Committee on Science and Law, with the support of the Carnegie Corporation of New York, undertook a major inquiry into the impact of modern technology upon individual privacy. That inquiry, headed by Professor Alan F. Westin, contributed significantly to greater understanding of the nature and historical roots of the interest in privacy, the development of relevant legal principles, and the complexity of the problems involved in protecting individual privacy in an era of rapid technological change. The results of the research appear in Westin, *Privacy and Freedom* (New York: Atheneum, 1967).

[3] The charges were initially made by Christopher H. Pyle, a law school graduate and former captain in Army Intelligence. Pyle, "CONUS Intelligence: The Army Watches Civilian Politics," *Washington Monthly,* January 1970, pp. 4–16.

[4] U.S. Congress, Senate, "Federal Data Banks, Computers, and the Bill of Rights," Hearings Before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, 92d Congress, 1st Session, Parts I and II (February 23-March 17, 1971) (hereinafter cited as *"Senate Hearings"*).

[5] See, *e.g.*, testimony of Assistant Secretary of Defense for Administration Robert H. Froehlke, *Senate Hearings,* pp. 378–390.

[6] See Department of Defense Directive 5200.27, issued March 1, 1971, and subsequent Army, Navy and Air Force regulations implementing that directive. The directive and regulations are reproduced in *Senate Hearings,* pp. 1239–1264.

[7] See, *e.g.*, testimony of Assistant Secretary Froehlke and Defense Department General Counsel J. Fred Buzhardt, *Senate Hearings,* pp. 384–385, 410–419, discussed *infra.*

[8] Joan M. Jensen, *The Price of Vigilance* (Chicago: Rand McNally & Co., 1968), pp. 122ff.; also *Senate Hearings* p. 160 (testimony of Christopher H. Pyle), pp. 344–345 (testimony of Prof. Morris Janowitz).

[9] Jensen, *op. cit.*, pp. 219–286; *Senate Hearings,* pp. 345–346 (Janowitz testimony).

[10] *Senate Hearings,* p. 160 (Pyle testimony), 346 (Janowitz testimony). There is some evidence that many of the files on individuals opened during the 1917–1924 period were retained by the one-time Chief of Army Intelligence, Gen. Ralph Van Deman, after he retired from active service in the 1920's and were used by him in connection with some political activities in California. See *Note: Judicial Review of Military Surveillance of Civilians,* 72 Columbia Law Review 1009, 1036 n. 190.

[11] *Senate Hearings,* p. 346 (Janowitz testimony).

[12] *Ibid.*

[13] *Senate Hearings,* p. 377 (Froehlke testimony).

[14] Quoted in Paul J. Scheips, *The Role of the Army in the Oxford, Mississippi Incident, 1962–1963,* Office of the Chief of Military History, Monograph No. 73 M (Washington, D.C.: Department of the Army, 1965), p. 284.

[15] Examples of apparent instances of surveillance activities by individual Military Intelligence units during this period include the keeping of files on civilians and civilian organizations in the Minneapolis area, photographing and opening of files on anti-war pickets near a Federal courthouse in Oklahoma City, and the monitoring of the activities of several state legislators, ACLU attorneys and anti-war activists in Texas. See *Senate Hearings,* p. 189 (Pyle testimony), pp. 337–339 (testimony of Texas State Representative Curtis Graves).

[16] *Final Report of Cyrus R. Vance, Special Assistant to the Secretary of Defense, Concerning the Detroit Riots, July 23 through August 2, 1967.* Department of Defense News Release No. 856–67, September 12, 1967, p. 59.

[17] *Ibid.*, pp. 49–50.

[18] *Senate Hearings* pp. 382–383 (Froehlke testimony), pp. 1119–1122 ("Annex B [Intelligence] to Department of the Army Civil Disturbance Plan, February 1, 1968"). Whereas the Vance Report's recommendations were aimed at collecting physical reconnaissance information, the February 1968 Intelligence Annex called for collection of data on politically active individuals and organizations as well.

[19] *Senate Hearings*, p. 1124. The entire plan is reproduced at pp. 1122–1137.

[20] *Senate Hearings* pp. 1134–1135.

[21] *Senate Hearings*, p. 384.

[22] *Ibid.*

[23] *Ibid.*

[24] *Senate Hearings, passim;* see also "Army Surveillance of Civilians: A Documentary Analysis by the Staff of the Subcommittee on Constitutional Rights," Committee Print, 92d Congress, 2d Session (Washington, D.C.: U.S. Government Printing Office, 1972) hereinafter referred to as *"Subcommittee Staff Report"*.

[25] *Subcommittee Staff Report*, pp. 12–14, 39–40.

[26] *Subcommittee Staff Report*, p. 96.

[27] *Subcommittee Staff Report, passim.*

[28] *Senate Hearings*, pp. 197–198 (Pyle testimony); 272–273 (statement of Ralph M. Stein).

[29] *Senate Hearings*, pp. 185, 200–201 (Pyle testimony).

[30] *Senate Hearings*, pp. 290, 296 (testimony of Joseph J. Levin, Jr.)

[31] *Senate Hearings*, p. 155 (Pyle testimony), 531–566 (testimony of Malcolm Moos, President of the University of Minnesota).

[32] *Senate Hearings*, pp. 306, 310–312 (testimony of Oliver A. Pierce).

[33] *Subcommittee Staff Report*, p. 96.

[34] *Subcommittee Staff Report*, pp. 69, 96.

[35] *Subcommittee Staff Report*, p. 96.

[36] *Subcommittee Staff Report*, p. 97.

[37] *Subcommittee Staff Report*, Preface, p. vi.

[38] See note 3, *supra.*

[39] *Tatum* v. *Laird*, U.S. District Court, District of Columbia, Civil Action Docket No. 459–70 (order dated April 22, 1970, not officially reported) (Hart, J.).

[40] *Tatum* v. *Laird*, 444 F. 2d 947 (D.C. Cir., 1971).

[41] 408 U.S. 1, 13 (citing *Ex parte Levitt*, 302 U.S. 633, 634 [1937]).

[42] The Court noted that directives issued by the Army and the Department of Defense since the time the lawsuit was filed "indicate that the Army's review of the needs of its domestic intelligence activities has indeed been a continuing one and that those activities have since been significantly reduced" (408 U.S. 1 at 8), but did not respond to the plaintiffs' contention (Br. pp. 88–91) that the evidentiary question of whether the directives had in fact produced a sufficient curtailment of surveillance activity remained to be resolved.

[43] 408 U.S. 1 at 24, 28–29.

[44] 408 U.S. 1, 38–40. Justice Marshall also joined in this dissent.

[45] 409 U.S. 824.

[46] *ACLU* v. *Westmoreland*, 323 F. Supp. 1153 (N.D. Ill. 1970), *aff'd sub nom ACLU* v. *Laird*, 463 F. 2d 499 (7th Cir. 1972), *cert. denied* —— U.S. ——, 34 L. Ed. 2d 699 (Jan. 8, 1973).

[47] 408 U.S. 1 at 15–16.

[48] See notes 18–37 and accompanying text, *supra.*

[49] *Senate Hearings*, pp. 385, 431–432. Similar testimony was presented by then Assistant Attorney General William H. Rehnquist, at pp. 598–603.

[50] *Senate Hearings*, pp. 384–385.

[51] *Ibid.*

[52] *Senate Hearings,* pp. 136–37.

[53] See note 24, *supra.*

[54] In the 92d Congress, bills were introduced by Sen. Ervin (S. 3750), Rep. Mikva (H.R. 5640, 5641, and 5761) and Rep. Abzug (H.R. 15823). In the current (93d) Congress, only Rep. Abzug has introduced a bill (H.R. 1967) though it is expected that Sen. Ervin will again introduce such a measure.

[55] Senator Ervin has observed, for example, that although extensive use was made of computers in the Army's domestic surveillance program, the Constitutional Rights Subcommittee "was first told informally that there were no computers; then, that there was one, but that it had been disconnected for this program; then, that there were a few more computers that the Department had forgotten about or not known about" (*Senate Hearings,* p. 1558). The history of the Army's public response to the disclosure is detailed in Captain Pyle's testimony before the Subcommittee *(Senate Hearings,* pp. 206–220).

[56] Reprinted in *Senate Hearings,* pp. 1253–1255.

[57] DOD Directive 5200.27, Section III. This provision also states that information gathering activities are to be subject to "overall civilian control, a high level of general supervision and frequent inspections at the field level," and that mere collection activities are authorized to meet "an essential requirement for information," maximum reliance is to be placed upon civilian investigative agencies.

[58] DOD Directive 5200.27, Section V.

[59] See *e.g.,* George C. Christie, "Government Surveillance and Individual Freedom: A Proposed Statutory Response to *Laird* v. *Tatum* and the Broader Problem of Government Surveillance of the Individual," 47 N.Y.U. L. Rev. 871, 879–883 (November, 1972).

[60] See, *e.g.,* testimony of Messrs. Froehlke, Buzhardt and Rehnquist, *supra,* notes 49–51 and accompanying text; Justice Department briefs in *Laird* v. *Tatum, passim.* The following provisions have been chiefly relied upon in support of this position:

> (1) The provisions in Article II of the Constitution which say that "The executive power shall be vested in a President . . .", that the President is "the Commander-in-chief of the Army and Navy of the United States," and that "he shall take Care that the laws be faithfully executed";
>
> (2) Article IV, Section 4 of the Constitution, which provides that "The United States shall guarantee to every State in their Union a Republican form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence;
>
> (3) The provisions of 10 U.S.C. §§ 331–333, which in essence implement the Article IV power by authorizing the President to use armed forces to suppress "insurrection" or "domestic violence" within a state; and
>
> (4) (with respect to surveillance operations conducted by the Army, which is the only branch of the armed forces which has to date been publicly charged with overreaching) 10 U.S.C. § 3012, which authorizes the Secretary of the Army to conduct all affairs of the Department of the Army including "functions necessary or appropriate for the training, operation, logistical support and maintenance, welfare, preparedness and effectiveness of the Army, including research and development."

[61] *Senate Hearings,* pp. 384–385 (Froehlke testimony), 598–599 (Rehnquist testimony).

[62] Brief for Appellees in *Tatum* v. *Laird,* 444 F. 2d 947 (D.C. Cir. 1971, Docket No. 24203). This argument, it should be noted, was not made by the Justice Department in the Supreme Court in the *Tatum* case.

[63] For a discussion of the debates at the Constitutional Convention and during

the struggle over ratification by the States regarding the role of the military and the limited function which the Framers contemplated that a standing army could be expected to perform, see Leon Friedman, "Conscription and the Constitution—The Original Understanding," 67 Mich. L. Rev. 1493, 1512–1541 (1969).

[64] *Wrynn* v. *United States,* 200 F. Supp. 457, 465 (E.D.N.Y. 1961).

[65] 343 U.S. 579 (1952).

[66] 407 U.S. 297 (1972).

[67] 407 U.S. 297 at 313, 321. The opinion also observed, *inter alia,* that:

> "History abundantly documents the tendency of Government—however benevolent and benign its motives—to view with suspicion those who most fervently dispute its policies. Fourth Amendment protections become the more necessary when the targets of official surveillance may be those suspected of unorthodoxy in their political beliefs. The danger to political dissent is acute where the Government attempts to act under so vague a concept as the power to protect "domestic security." Given the difficulty of defining the domestic security interest, the danger of abuse in acting to protect that interest becomes apparent. . . . The price of lawful public dissent must not be a dread of subjection to an unchecked surveillance power. Nor must the fear of unauthorized official eavesdropping deter vigorous citizen dissent and discussion of Government action in private conversation. For private dissent, no less than open public discourse, is essential to our free society. * * *
>
> Official surveillance, whether its purpose be criminal investigation or ongoing intelligence gathering, risks infringement of constitutionally protected privacy of speech. Security surveillances are especially sensitive because of the inherent vagueness of the domestic security concept, the necessarily broad and continuing nature of intelligence gathering, and the temptation to utilize such surveillances to oversee political dissent. We recognize, as we have before, the constitutional basis of the President's domestic security role, but we think it must be exercised in a manner compatible with the Fourth Amendment. In this case we hold that this requires an appropriate prior warrant procedure."

Id. at 314, 320.

[68] See testimony cited at notes 49–51, *supra,* and accompanying text.

[69] 444 F. 2d 947 at 957–958. With respect to the question of the utilization of the military's vast resources of personnel and material, there was a considerable amount of testimony at the Senate hearings about the resources devoted to surveillance operations. For example, one former agent testified that an anti-war rally in Colorado attended by a total of 119 persons, "close to half the people there were from one intelligence command or another, including Naval Intelligence individuals who came from the west coast to see how to monitor a rally correctly." He added that some agents were assigned to tape the speeches of anti-war activists at the rally, but were unable to do so because of the noise produced by Army helicopters flying directly overhead. *Senate Hearings,* pp. 314–315, 330 (testimony of Laurence F. Lane).

[70] *Roe* v. *Wade,* 410 U.S. 113 (1973).

[71] See, *e.g., Boyd* v. *United States,* 116 U.S. 616 (1886); *Weeks* v. *United States,* 232 U.S 383 (1914); *Mapp* v. *Ohio,* 361 U.S. 643, 654–657 (1961). *Griswold* v. *Connecticut,* 381 U.S. 479, 484 (1965); *Katz* v. *United States,* 389 U.S. 347, 350 (1967); *Stanley* v. *Georgia,* 394 U.S. 557 (1969); *Eisenstadt* v. *Baird,* 405 U.S. 438, 453–454; *Roe* v. *Wade, supra.*

[72] Opinion for the Court in *NAACP* v. *Alabama,* 359 U.S. 449 at 462 (1958).

[73] See, *e.g., NAACP v. Button,* 371 U.S. 415, 432–433 (1963).

[74] See, *e.g., Baird* v. *State Bar of Arizona,* 401 U.S. 1 (1971) (inquiries into past political associations by bar admission committees); *NAACP* v. *Louisiana, supra,*

and *Bates* v. *City of Little Rock,* 361 U.S. 516, 523 (attempts to require disclosure of membership lists of organizations engaged in disseminating controversial ideas); *Talley* v. *California,* 362 U.S. 60 (1960) (attempt to require author of a political handbill to identify himself); *Lamont* v. *Postmaster General,* 381 U.S. 301 (1965) (attempt to require persons desiring to receive certain kinds of political literature to register that desire with the postal authorities). Chief Justice Burger's opinion for the majority in *Laird* v. *Tatum* sought to distinguish some of these cases on the grounds that they involved an exercise of governmental power which was "regulatory, proscriptive, or compulsory in nature" and that the complainants in them were "either presently or prospectively subject to the regulations, proscriptions or compulsions."

[75] See, for discussions of many of the principal studies, Frank Askin, "Surveillance: The Social Science Perspective," 4 Colum. Human Rights L. Rev. 59–88; see also Alan F. Westin, *Privacy and Freedom, op cit supra* note 2; Arthur Miller, *The Assault on Privacy* (Ann Arbor: University of Michigan Press, 1971).

[76] Askin, *loc. cit. supra,* at 64–68, and sources cited therein.

[77] *Senate Hearings,* p. 603.

[78] See note 55, *supra.*

[79] The closing paragraph of the majority opinion stated, in fact that:

> "Indeed, when presented with claims of judicially cognizable injury, resulting from military intrusion into the civilian sector, federal courts are fully empowered to consider claims of those asserting injury; there is nothing in our Nation's history or in this Court's decided cases, including our holding today, that can properly be seen as giving any indication that actual or threatened injury by reason of unlawful activities of the military would go unnoticed or unremedied."

[80] Although the complaint clearly could have been construed—as plaintiffs argued that it should have been—to allege continuing injury to reputation, invasion of privacy, and infringement of rights to free association, the Court declined to do so. On the contrary, it took particular note of a remark made by one of the plaintiffs' counsel, at the oral argument in the Court of Appeals, that the plaintiffs themselves "are not, obviously, people who are cowed and chilled." 408 U.S. at 1, 13–14 n. 7.

[81] 444 F. 2d 947 at 958.

Mr. MAHONEY. Fine.

Let me briefly summarize the main substance of the statement and the report, and then make a few observations about the Defense Department's position as it has been outlined by Mr. Cooke.

Reviewing the public record on the history and recent scope of military surveillance, mainly a record established by this subcommittee in its 1971 hearings, we found that record to be a shocking one—one which points clearly to a need for congressional legislation to curb abuses of the sort which took place during the 1967–70 period.

The importance of effectively prohibiting any future resumption of the sort of military surveillance activities which were carried on during the 1967–70 period cannot be underestimated. Such activities invade the privacy of individuals and groups, inhibit free expression of beliefs and ideas, and in general exert a chilling effect upon the political activities of a free people. We believe that such activities exceed the constitutional and statutory authority of the Armed Forces, violate or seriously jeopardize rights guaranteed by the first, fourth, and ninth amendments to the Constitution, and cannot be justified on the basis of any compelling governmental interest.

Even assuming for the sake of argument that such activities are not clearly unconstitutional, they are surely undesirable as a matter of policy. Such activities would be difficult to justify no matter what governmental agency conducted them, because of their intrusions into individual privacy and the chilling effect which they exert upon political activities. They are especially repugnant to American ideals and traditions when undertaken by the armed services. It is directly contrary to our Nation's long tradition of civilian control of the government for the military to be involved in such matters. To the extent that such surveillance activities must be carried on at all, it is far more appropriate that they be undertaken by a civilian arm of the government—and even then, of course, such activities should be subject to on-going congressional scrutiny. If surveillance activities of any sort are justifiable and necessary, it is likely that a civilian agency will be able to conduct them more efficiently, less intrusively, less threateningly, and probably at less cost to the taxpayer, than military intelligence.

The restrictions upon such activities which have been imposed by the armed services in the past 2 or 3 years do not resolve the problem. We do not mean to minimize the significance of the steps taken by the Defense Department and the armed services to limit surveillance activities. The regulations that have been promulgated are laudable constructive steps in the right direction. But as presently written they still leave room for an unjustifiably wide range of monitoring activities to be conducted by military personnel. Indeed, I think it is quite clear from Mr. Cook's testimony here this morning that the new regulations still purport to leave the armed services with fairly wide latitude to conduct surveillance operations if and when they want to.

Moreover, the terms of the regulations—or the vigor with which they are enforced—may change at any time. The incumbent administration or a future administration could find it convenient to again adopt a domestic intelligence program, and could simply rescind or modify the present regulations—conceivably even by classified exceptions to them.

In the absence of specific statutory prohibitions on such activities—prohibitions which are enforceable—there will as a practical matter be no obstacle to resumption of the kind of activities which were undertaken during the 1967–70 period other than the "self-discipline" of the executive branch.

With these considerations in mind—and they are spelled out in much more detail in my statement and in our printed report—our committee has recommended that Congress enact legislation generally prohibiting all military surveillance of civilian political activities and proscribing all collection and storage of information on the political or private affairs of individuals not directly affiliated with the Armed Forces. The basic principles which we feel should be incorporated in any such legislation are outlined in the statement and the report.

The statement also contains some specific comments and suggestions with respect to S. 2318, the bill presently before the subcommittee.

We are, of course, wholeheartedly in favor of the bill's basic concepts of prohibiting military surveillance except in very limited circumstances, establishing criminal sanctions for violation of the restrictions, and providing civil remedies for persons who have been subjected to unwarranted surveillance activities. For the most part, we believe the bill is well drafted. We do, however, have some comments and suggestions to make with respect to several of its provisions, as follows:

1. The general prohibition of surveillance operations contained in the proposed new section 1386 (a) appears to be directed only at the command level. It speaks, for example, of "an officer of the Armed Forces" who "employs" any part of the Armed Forces to conduct investigations, maintain surveillance, et cetera. We recognize that the phrase "officer of the Armed Forces" may be a term of art which covers enlisted men as well as commissioned officers, but we think it should be made clear that members of the Armed Forces of every rank—from private on up—are covered by the prohibition. In that connection, we would also suggest the use of a verb other than "employs"—perhaps "causes" would be better. In addition, it should be made clear that the prohibition also covers any nonmilitary persons utilized for such purposes.

2. We believe that the language of the proposed section 1386 (a) should be revised in order to ensure that all of the areas that should be protected from military surveillance are covered by the general prohibition. Thus, we suggest that the language be amended to prohibit investigation into, surveillance over, or the recording or maintenance of information regarding "the beliefs, associations, political activities, or other person—", and what we are thinking of particularly here is a prohibition against the kind of data gathering on persons wholly unaffiliated with the armed services regarding their sex lives, psychiatric histories, financial affairs, and so forth that turned up as a result of the 1971 hearings.

3. We recognize that there may be grounds for permitting the armed services to monitor at least some kinds of conduct of military personnel. However, military intelligence should not have carte blanche to pry into the private affairs of the men and women in the armed services. Rather than exempting surveillance of members of the Armed Forces from the general prohibition, as section 1386(a) would now do, we would recommend covering this matter through a narrow and specifically worded exception which would be included in section 1386(b). For example, we see no objection to an exception which would authorize limited surveillance over military personnel where there is probable cause to believe that they may be engaged in espionage, sabotage or other serious offenses.

4. The exception contained in the proposed Section 1386(b)(2), as it presently reads, would appear to leave room for military surveillance operations arising out of any incident "involving the destruction, damage, theft, unlawful seizure, or trespass of the property of the United States"—whether or not committed on a military installation or defense facility. Perhaps that might be somewhat more precise. At a minimum, the provision should be reworded to confine the exception to surveillance directly related to the damage or unlawful seizure of Department of Defense property. Even then, we seriously question whether the investigation of criminal conduct occurring anywhere other than on a military installation is not more properly a function of a civilian agency.

5. We also question whether the exception contained in the proposed Section 1386(b)(3) is necessary, though this is perhaps a closer question. We do feel that civilian agencies would probably be better suited to conduct investigations of individuals to determine their suitability for employment by the Armed Forces or by a defense facility, or conduct these checks with respect to clearances where they are already employed in such facilities.

6. Particularly since the militia of the several states—the various National Guard units—are so closely linked to the regular Armed Forces—and, indeed, are heavily subsidized with Federal funds—we fail to see the necessity for exempting members of the militia from the proposed prohibitions. Surveillance by the military is just as distasteful when conducted by personnel under the control of state authorities as when conducted by personnel under the control of Federal authorities. We would delete the exemption now contained in the proposed section 1386(b)(4).

7. We would modify the language now contained in the proposed section 1386(b)(1), to provide that any surveillance activities undertaken by the Armed Forces when assigned by the President to the task of repelling invasion or suppressing rebellion, insurrection or domestic violence should be limited to collecting tactical information of immediate utility in quelling the disorder, should cease with cessation of the violence and withdrawal of the troops, and should in no event extend beyond 60 days without explicit congressional approval. We would also add language requiring that any information on individuals and groups gathered by the Armed Forces while assigned to such tasks be turned over to civilian law

enforcement authorities or else destroyed within 60 days of the date that troops are withdrawn. I should add that I am sure that the association would endorse the additional suggestions made by Mr. Vance in the statement Mr. Birkett read a few minutes ago.

Mr. BIRKETT. We do, indeed.

Mr. MAHONEY. We would modify the wording of the proposed section 2691(a) to allow any person or organization that has been the subject of an act prohibited by the proposed 10 U.S.C. section 1386 to sue for damages. This would deal with the problem posed by the narrow concept of standing created by the majority opinion in *Laird* v. *Tatum.*

Senator ERVIN. Excuse me. I have a vote signal so I have to go to the Senate and vote. I will be back in a moment.

I want to thank you and express my appreciation to the Bar Association of New York City for the help they have given us in other times past.

Mr. MAHONEY. Thank you, Senator and thank you for the invitation to appear here today, too.

Mr. BASKIR. Mr. Mahoney, there is a vote but I think you are just about finished with your statement. It might be best if you continued with it, although the Senator has to go vote, in the interest of time.

Mr. MAHONEY. Certainly. We will be glad to.

We would also add language expressly authorizing persons who bring suit under the proposed section 2691 to recover punitive damages and counsel fees.

Since the Department of Defense's position is so clearly at odds with our own, perhaps it might be useful to get on the record some responses to specific points made in Mr. Cooke's statement. I had an opportunity yesterday afternoon to pick up a copy of Mr. Cooke's statement, so I will refer as I go along to specific pages in his statement.

At the outset, on pages 1 and 2, I understand that the position of the Department of Defense is that they agree that there should be clear limitations and boundaries on the jurisdiction of the military to investigate persons outside the Armed Forces. With that we agree wholeheartedly. I think that may be about the point at which our agreement ends, but let me go on from there.

On page 6 of Mr. Cooke's written statement he comments that the Defense Department has built in some flexibility for what they call "special operations" which involve obtaining information on organizations which the Defense Department perceives as presenting a threat to its functions and personnel. A number of questions are raised by this comment.

First of all, are special operations limited to gathering information or do they involve other actions? Special operations, to many, denote covert infiltration, disruption of the activities of groups and so forth. We seriously question whether this is an area in which the armed services should be involved at all. Again, it seems an area for civilian agencies to the extent it should be undertaken at all. The obvious question here is, by what statutory authority does the military get involved in such activities?

What sort of information gathering techniques are authorized? By whom? What limitations are there on how the information is disseminated and to whom it is disseminated? What limitations are there on how long and in what form this sort of information is retained?

On page 7 of his statement, Mr. Cooke noted that the DOD Directives provide that the chairman of the Defense Investigative Review Committee can authorize the creation of a data bank on nonaffiliated civilians. The obvious question is, why? For what legitimate purpose? Indeed, the creation of data banks is precisely the evil the subcommittee has been trying to get at for some period of time. There is no authority we can see for the Army to create such a data bank. If they need one, it seems to us that they should come to Congress for explicit authority to establish it and come up with specific reasons why it would be necessary.

On pages 8 and 9 of the written statement, there is an attempt to justify the fact that the existing DOD regulations do not apply overseas, and I assume that the argument would also run that no statute should impose restrictions overseas. Two basic grounds are advanced by the Department as we understand them here. First, they point to the existence of some complicated arrangements, some apparently unwritten, with foreign countries. Second, they point to the fact that the FBI does not have primary internal security responsibilities overseas.

One difficulty with both of these arguments is that they wholly fail to take into account the fact that Americans living abroad have constitutional rights, too. They don't leave these rights behind them when they depart our shores, at least insofar as their relationship with our government is concerned.

The second difficulty is that these arguments ignore the fact that the military does not have any statutory authority for undertaking such activities, at least none that we are aware of.

Insofar as the surveillance of off-post activities of American civilians are concerned, it seems to me that—from what we have been able to understand about the surveillance activities in connection with the political group that was supporting Senator McGovern for President in 1972 in Berlin—it is a situation all too reminiscent of what was going on in the 1967–70 period in this country.

On pages 9 and 10 there is a broad assumption that the DOD has a "well-recognized need" to conduct investigations of civilians where such activity is related to a legitimate government interest. This is a shockingly sweeping statement of the scope of legitimate Department of Defense activities. This is the sort of argument that can, of course, be used to support almost any sort of executive branch data gathering. An infinite range of contingencies and government interests can be imagined, and there are many kinds of information which it would doubtless be very useful for a Chief Executive or his advisors to have. But under our Constitution, the government is not free to gather whatever information a President or his advisors think might be useful or to use whatever means of gathering information might seem convenient. The rights of individuals must be taken into account, and so, too, must the statutes and constitutional provisions which grant authority to use troops in situations involving domestic violence, and which impose constraints upon the use of troops for domestic purposes.

We think the constraints imposed by 10 U.S.C., sections 331–333 are fairly severe. They are fairly explicit in their wording. As we read them, the import is very clear that Federal troops can be used in connection with civil disorders only pursuant to these provisions, only when the President has issued the kind of proclamation which is required by 10 U.S.C. section 334. They should be used only for the limited purpose of restoring order when local and state authorities have been unable to do so, and only when the conditions outlined in those statutes have been met.

On page 10 Mr. Cooke says the bill now before you—because that bill fails to draw a clearly defined line between what is permissible and what is impermissible investigation—says because that bill is inadequate, the DOD is opposed to the enactment of any criminal statute. This strikes us as sort of incredible. Is Mr. Cooke saying that, because the Department finds this particular bill objectionable, it is opposed to the enactment of any criminal statute, even if the possible drafting problems are overcome?

On pages 10 and 11, Mr. Cooke suggests that if the bill were to be passed in its present form, military personnel could be charged with a crime if they had things like the Congressional Directory, a Martindale-Hubbell or the Congressional Record. A short answer to this suggestion, we think, is that it is quite clear from the legislative history that the bill is not directed at the possession of these sorts of documents. This is a problem that can be taken care of in a committee report, or if really thought necessary, through some minor drafting work in preparing new language for inclusion in the bill.

On page 12 of his statement, Mr. Cooke raises the specter of civilian terrorist groups planning for attack on a military base, conspiring to steal weapons and so forth. He says that the bill would place the armed services in violation of the statute if they were to record or to maintain such advance threat information. I don't think we would have any objections to the armed services simply receiving advance information about specific threats of such violent action, but we would draw a sharp distinction between the armed services receiving such information and going out and doing the investigation into possible threats themselves. Such investigations should be done by a civilian authority, we think. Moreover, we think there should be limitations on how long and in what form any such advance warning information should be retained by the armed services. Again, we come back to the basic purposes of the legislation—to prevent systematic collection and storage of information on political and personal affairs of individuals and organizations.

On page 12 Mr. Cooke suggests that the bill would prevent the Armed Forces from obtaining any advance information which might be necessary for prepositioning of troops where there apwould operate on the presumption that this is an area where the responsibility is one of civilian law enforcement agencies, and it is beyond in general the legitimate functions of the Department itself. We can see that there may be some areas—and clearly this goes to the criminal conduct problem—where the armed services have a legitimate interest. But once you get off-post, it seems to us that there is an awfully heavy burden on the armed services to show any need to get involved. I don't see them coming forward.

Certainly a wide ranging general investigation is something that, to the extent it should be done, should be done by civilian agencies, not by the armed services.

Mr. Baskir. Even assuming there is some need to do criminal investigations off-post, those criminal investigations need not involve collecting information about somebody's political beliefs?

Mr. Mahoney. Yes.

Mr. Baskir. Only what has to do with criminal violations?

Mr. Mahoney. Yes. I agree with you wholeheartedly.

Mr. Birkett. Or other beliefs or other activities.

Mr. Baskir. You mean if they are related to criminal conduct?

Mr. Birkett. Yes.

Mr. Mahoney. You have to look at just what kind of criminal activities—to the extent you might let the armed services get involved in investigating criminal conduct off-post, you have to look into what kind of criminal conduct they would be investigating. When you get into areas like espionage and sabotage, that is one thing. It is an entirely different matter if you are talking about a much less serious kind of activity that might fall into the petty misdemeanor category, for example.

Mr. Baskir. It is my impression that it is a violation of military regulations to inquire into the political activities or beliefs of an individual when doing a security or background investigation for employment or a clearance.

Assuming that, and with respect to exception No. 3, it seems to me that such exception may be an excess of caution, since even the military thinks political information is irrelevant for such purposes.

Mr. Mahoney. To start with, I am not sufficiently familiar with what the regulations are covering employment security checks. We do feel that is an area that probably ought to be handled by civilian agencies. To the extent that the military must be doing that, they should not be getting into political activities and beliefs, no.

Mr. Baskir. The first exception has to do with troops being committed with respect to insurrection or rebellion or civil disorder. When the military is used in that circumstance, do you feel there would be a need for them to collect information about the political beliefs, activities, or associations of specific individuals?

Mr. Mahoney. I can't see any legitimate need to do that. It seems to me if the military really does see a need to collect this kind of information that it would be helpful for them to come forward and say why. Under what kind of circumstances do they perceive this to be necessary?

Mr. BASKIR. So, examining the three exceptions, not with respect to the fourth, it would appear that describing them as exceptions may be an excess of caution, because strong arguments at least can be raised that even in those circumstances there is no proper need for the military to collect information of the sort we have been describing.

Mr. MAHONEY. We see no need to collect that kind of information.

Mr. BIRKETT. I think it might be handled in some such fashion if the military needs reassurance by saying nothing in the statute shall be deemed to authorize or to prohibit rather than calling it an exception.

Mr. MAHONEY. It seems to us that the kind of information that the military would need in the interest of being deployed under sections 331–333 of title 10 would be information on size and location and specific violent actions of rioters.

They don't have need, in that kind of a crisis situation, for detailed information on people's political activities and beliefs. They will have plenty to do without getting into that kind of data gathering, in our judgment.

Mr. BASKIR. Thank you very much, gentlemen.

The chairman has asked me in the event he couldn't get back in time, to adjourn these hearings on his behalf subject to the call of the Chair.

[Whereupon the hearing adjourned subject to the call of the Chair at 12:05 p.m.]

APPENDIX

STATEMENTS FOR THE RECORD

Prepared Statement by Joan M. Jensen, Professor, University of San Diego, Entitled "Military Surveillance of Civilians, 1917–1967"

For the past fifteen years I have been studying and writing about the history of the internal security policies of this country. My book, *The Price of Vigilance*, published in 1968, focused on the surveillance activities of the American Protective League, the Bureau of Investigation, and military intelligence during the World War I period. Since that time, I have been at work on a larger study of the surveillance of civilians by the military. Thus my interest and concern as a historian and as a citizen predates the current controversy.

I was surprised to learn that during the 1971 hearings on Army Surveillance of Civilians held by the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, it was suggested that the surveillance of civilians during the late 1960's was unique and unprecedented. It is true that the scale and scope of that surveillance was unprecedented; never before had the political activities of so many civilians been computerized and never before had such vast resources been employed by the military to watch civilians. But Army surveillance of civilians did not begin in 1967. During the preceding fifty years, the United States Army monitored political activity during every major home crisis, from the German spy scare of 1917 to the anti-war protests of 1967. This surveillance, like the CONUS program of more recent origin, was initiated and executed without significant supervision and control by civilian officials. This was true regardless of which political party was in control of the executive branch of the government. I would like to sketch that history briefly, and to draw some conclusions from it.

ORIGINS OF ARMY INTELLIGENCE

What we now know as Army intelligence was first institutionalized in the War Department as the Military Information Division in 1888. This division was established primarily to provide for continuous collection of information abroad in peacetime as well as war. It also had the task of providing topographical and logistical information on conditions within the United States. It was modeled on the Prussian General Staff system of collecting information and was similar to units which other European nations were establishing in the late nineteenth century.

No structure for military surveillance of civilians existed during the Spanish-Cuban-American War. The focus of Army intelligence was counter-espionage and the War Department spent a total of $45.00 in "secret service" funds to hire two detectives to shadow suspected Spanish spies in Tampa, Florida. Civilian surveillance existed but it was handled by the Secret Service of the Treasury Department which President William McKinley gave $50.000 from National Defense Funds to put at the disposal of the War Department. At the request of the Assistant Secretary of War, the Secret

Service investigated the loyalty of civilians and soldiers and placed over 600 persons under surveillance during the few months of war.[1]

The first military intelligence network for watching civilians was developed during the Philippine-American War in 1899, when insurgents refused to acknowledge American control of the Islands. The Commanding General, Arthur MacArthur, established a Military Information Division which extended a large network of surveillance through the Islands. When the United States intervened in Cuba in 1906, Army intelligence established a similar network there. In both places, surveillance was used to stop political movements which contested policies of the occupying armies of the United States. Political surveillance was also used to a lesser extent by General John Pershing in the Southwest during 1916. Pershing returned from Mexico convinced that labor radicalism in Mexico posed a distinct threat to the internal security of the United States.[2] Army intelligence networks to watch insurgents and labor radicals in Cuba, the Philippines, and the Southwest were to provide the experience and the model for later surveillance of civilians at home.

WORLD WAR I

The first major use of civilian surveillance in the United States came in 1917 after the United States declared war on Germany and entered the European conflict. Widespread fear of alleged German espionage networks (which never materialized) and doubts about the loyalty of recent German immigrants led to the creation of a widespread domestic surveillance program throughout the country. Army intelligence, in the form of the Military Intelligence Division (MID) of the War Department, played an active role in this effort.

The Military Intelligence Division began its war effort by training 150 officers and 300 sergeants. A few of these officers and fifty sergeants went to France with General Pershing; but most remained in the United States to form what eventually grew to be a relatively large Corps of Military Intelligence Police attached to Army posts, bases, and camps. Additional officers commissioned during the war were assigned to staff special offices in cities. In Washington, a work force of 1,000 civilians was hired to keep records. Their work included assembling extensive clipping files on such subjects as bolshevism, anarchism and feminism, organizing dossiers on groups such as the Industrial Workers of the World, and filing thousands of investigations into the political activities of individuals. By the end of the war, two million dollars had been spent for the work of military intelligence.[3]

Military intelligence also had the assistance of thousands of unpaid volunteers in the field. The largest force was the American Protective League, a group of business and professional men who nominally worked for the Justice Department and carried Justice Department credentials, but who often reported directly to military intelligence. One of the directors of the APL was commissioned as a military intelligence officer, put in charge of a special unit in the MID, and authorized to assign cases for investigation directly to volunteers in the field. The APL eventually reached an estimated 350,000 members which clearly qualifies it as the largest private domestic intelligence group in American history. Military intelligence officers in the Western Department, however, were not content with the information they received from their own agents and APL volunteers. They created, without War Department authority, a Volunteer Intelligence Corps of their own which drew upon the services of about a thousand civilians to report on suspected opponents of the war. The MID also received reports from the Texas Loyalty Rangers and the Minute Men of Oregon. Elsewhere in the country scores of local Loyalty Leagues reported directly to the military intelligence agents. In New York, the head of the Pinkerton Agency was given an Army commission and asked to use his detectives as volunteer agents. A number of British Military Intelligence agents assigned to watch East Indian and Irish nationalists within the United States also volunteered information on Americans supporting these independence movements.

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[1] The only published comments on the Secret Service in the War of 1898 are in Don Wilkie, *American Secret Service Agent* (New York: Burt, 1934), 6, 12–14. There was never any public report on their total war activities. The first few months were reported in U.S., Secretary of the Treasury, *Annual Report* (1898), 866. The detectives are mentioned in W. S. Scott to Assistant Secretary of War, July 10, 1898, File 115052, NA, RG 92.

[2] "History of the Philippine Department," undated, MID File 10560–152, NA, RG 165; Allan Reed Millett, *The Politics of Intervention: The Military Occupation of Cuba 1906–1909* (Columbus, Ohio: Ohio State University Press, 1968), 130–131, 138–139; Harold M. Hyman, *Soldiers and Spruce: Origins of the Loyal Legion of Loggers and Lumbermen* (Los Angeles: Institute of Industrial Relations, University of California, 1963), 25.

[3] Some of the information on the MID in World War I has been published in my book *The Price of Vigilance* (Chicago: Rand McNally, 1968).

The scope of the work was broad. In addition to investigation civilians suspected of various types of disloyalty, the military agents and their volunteers also conducted specific investigations of draft evaders, civilians going overseas with the military, civilians suspected of fraud in War Department contracts, civilians involved in labor disputes, and civilians who associated with soldiers. One of the most ambitious surveillance networks existed for some time in Atlanta, Georgia, where the Army's Southern Department put the entire city under surveillance, organized civilian operatives who investigated families which entertained soldiers, checked the loyalty of soldiers' women associates, and watched hotels.

The expansion of military intelligence took place rapidly and secretly. The farther from Washington, the more active the MID offices seemed to be. The Western Department had intelligence offices at thirty posts, five camps, and two stations, plus counter-espionage organizations throughout the civilian population. It had over fifty men in the Corps of Intelligence Police, and thousands of APL volunteers. At its headquarters in San Francisco, eight large rooms housed the soldier investigators. MID agents claimed they censored 100,000 pieces of mail each week. Although this censorship was originally established to check mail going out of the country, it was soon used to intercept the domestic mail of civilian suspects. Surveillance included not private mail, periodicals, and books, but also extended to movie scenarios which were reviewed by the MID on request.

The MID countered what it termed "hostile propaganda and misguided leadership." It kept the leaders of the Mexican-American community in Los Angeles under surveillance and monitored the activities of such anti-war groups as the People's Council of America and the Theosophists. An investigator was employed to infiltrate the San Francisco Chinese community and informers were encouraged to send in reports on Chinese suspected of draft evasion. MID operatives carried special identification cards and badges which were used when information could not be secured otherwise. Many also were authorized to make arrests by municipal police departments or county sheriffs who deputized them. Occasionally, they were accredited as representatives of the telephone company, gas and electric companies, newspaper publishers, and other commercial concerns to enable them, as the chief intelligence officer for the Western Department later explained, "to enter offices or residences of suspects gracefully, and thereby obtain data."

Accompanying the expansion of military surveillance operations was a move to empower the military to arrest civilians suspected of espionage and sabotage and to prosecute them in military courts. Military intelligence chiefs supported expansion of military jurisdiction around defense plants, and military trials for suspects apprehended there. Army intelligence also endorsed a claim of the Provost Marshal General that the entire country be designated a war zone and that the military be given complete responsibility for surveillance, arrest, and trial of persons accused of treason or espionage.

Although the Attorney General and President Wilson were able to stop the move by the military to take complete control over internal security, the Justice Department had to remain constantly alert to the attempts of Army intelligence to expand surveillance. Secretary of War Newton D. Baker agreed with the Justice Department that Army intelligence should be curtailed, but he was never able to control the expansive military bureaucracy below him. The Justice Department believed, upon good evidence submitted by agents of the Bureau of Investigation, that Army intelligence officers in some areas still intended to supplant the work of the civilians completely.

Part of Baker's inability to control Army intelligence stemmed from MID's aggressive and impatient chief Ralph Van Dieman, who had developed the MID in the Philippines and who attempted to establish a network of military intelligence agents in the United States in the years before World War I. The Chief of Staff had opposed such an intelligence establishment at home. Van Dieman lobbied behind Baker's back and over the Chief of Staff to get his section established in the War College Division. Later, when conflict with the Justice Department continued, Baker sent Van Dieman to Europe, placed the MID under the Chief of Staff, and appointed a man with no military intelligence background to head the MID. The changes made little difference; the MID continued to resist civilian control from above. The new head, Marlborough Churchill, considered himself a public relations man for the MID, ran interference with the Chief of Staff and Secretary of War, and continued to expand civilian surveillance.

After the Armistice, at a time when civilians were drastically reducing other agencies of the government, Churchill fought trimming of his agency by Baker. In 1919, Churchill was able to obtain another 400,000 dollars from Congress by arguing that the money was primarily to conduct positive intelligence abroad. The MID did reduce its home front force but it continued to enlist the help of APL veterans, after the Attorney General had ordered them disbanded because of the dangers they posed to the public during peacetime. APL volunteers continued to work for the military and to become involved in harassment of labor leaders during the fall of 1919 when the Army was called into a number of cities for strike duty.

During World War I, Army intelligence defined its own mission with little control by the civilians and began a practice that was to become a pattern: evading control by civilians and refusing to curtail surveillance of civilian political activities when asked to do so by civilian superiors. The structure of counter-insurgency adopted from earlier models in the Philippines and Cuba encouraged Army agents to move from countering espionage to countering dissent.

POST WAR ERA

The expansion of Army intelligence and its vast investigating effort culminated after World War I in the development by the War Department of War Plans White, based on the possibility that there might be a domestic rebellion. These secret plans, apparently also influenced by information gather by the MID from European countries, expected a well organized and controlled movement for the overthrow of the government. The MID subsequently used APL veterans to report on "disloyal" organizations and "loyal" organizations which might be counted upon to combat un-American activities and to aid in preserving law and order in case the military needed assistance.

Less secret were the activities of Army agents among labor groups and other politically active organizations. Newspaper publicity brought questioning of Secretary of War Baker about wartime surveillance, and complaints of its continuance. Baker apparently never investigated these complaints himself but merely passed them on to Army intelligence to compose replies. Baker told inquiring congressmen that Army intelligence had been primarily concerned with counter-espionage during the war; in fact, most of the military surveillance did not involve suspected spies. Congress never found out what Army intelligence had done during the war. Publicity by the press and mobilization of public opinion against MID intrusion into civilian affairs did occur, but the Democratic administration refused to deal openly with the dangers to civil liberties posed by military surveillance. That refusal helped discredit the Democrats. More importantly, it discredited the federal government in the eyes of those politically active people who might have participated in creating alternatives to the system of military surveillance.

Even within the Army, there were complaints that the MID was tyranizing officers and men by investigating the private relations and business of individuals. Officers within the MID itself began to criticize the pro-capitalist bias and the wartime spirit of "getting" pro-labor radicals, and liberals, which had resulted in 1800 separate files being collected on radicals. MID officer Gardiner Harding objected that too many European methods were being used on radicals: spying on individuals, use of agents provocateurs, terrorism, arrests. Such tactics might be the ruin of the MID, he warned. He recommended that the MID remain purely strategic in peacetime.

Despite recommendations for severe restrictions of the activities of the MID and the curtailing of funds by Congress, military agents continued to collect domestic intelligence directly and through civilian volunteers. American Legion members, for example, furnished information on the Industrial Workers of the World, Socialists, and the Non-Partisan League. Orders allowing direct investigations by agents were not rescinded until March 1922 and as late as March 1923 the Adjutant General's office had to issue an explicit order directing intelligence agents not to collect information directly in peacetime. Although agents were warned against using volunteers for individual investigations, no orders were issued banning the use of volunteers to collect information on political groups.

During the 1920's MID, renamed G–2 after General Pershing's intelligence group in Europe, continued to study political groups, propaganda, and unrest in the United States as well as in foreign countries. It attempted to forecast the civil disturbance situation and to identify cities in which labor unrest and racial disturbances might require the use of federal troops. Such studies on groups considered subversive were compiled from questionnaires sent by Army intelligence to "reliable" citizens (often APL veterans), and from information obtained through liaison with the Bureau of Investigation, local police, and state officials. Contacts were made cautiously to give the impression that G–2 was not active in time of peace. In this way G–2 was able to collect information on pacifists and to counteract their work through organizations friendly to the military, without actually continuing active surveillance. Some officers collected information on both radical and counter-radical activities but most sources of information remained narrowly conservative, and counter-radical groups were considered allies of the military. In this form, political surveillance of civilians continued through the 1920's.

MILITARY INTELLIGENCE IN THE DEPRESSION

Most G–2 activities ceased by the end of the 1920's but the institutional capability and organization structure for civilian surveillance remained. When the depression brought widespread unemployment and urban violence, G–2 responded to the crisis by attempting to reestablish active surveillance of civilians in the United States.

The first attempt to lift the restrictions on corps area and field intelligence officers in February 1931 was disapproved by Chief of Staff Douglas MacArthur as "not advisable." Six months later, MacArthur gave temporary approval to corps area commanders to forward monthly reports on subversive activities in their areas.

In May 1932, when World War I veterans were beginning to arrive in Washington with demands that deferred benefits be given to them immediately because of the depression, the War Department directed all corps area intelligence officers to investigate and report regularly on bonus marchers. A daily memorandum was also prepared for MacArthur describing the current status of marchers already in Washington. War Plans White were revised for Washington and in June secret code messages to corps commanders asked about the presence of communistic elements and the names of leaders of known communistic leanings in bonus groups. Most replies indicated little concern. Some reports, however, bordered on hysteria. The Eighth Corps intelligence officer stationed at Fort Sam Houston, for example, denounced bonus marchers from California as dangerous Jewish communists financed by Metro-Goldwyn-Mayer backed by Russia. As the date of the Bonus March approached, G–2 agents solicited information from reserve officers, American Legion officials, and volunteer patriotic groups. In Washington, military undercover agents infiltrated the demonstrators and reported on their activities.

These reports appear to have percolated through the entire administration causing a sense of fear greatly out of proportion to the actual danger from the assembled veteran protestors. As a result, the Justice Department's plan to clear the area gradually was rejected and federal troops were called out.

Once authorized to employ force, Chief of Staff MacArthur refused to allow even President Herbert Hoover to intervene. He considered the military subordinate only until military operations began. Against the wishes of Hoover, MacArthur used massive force to scatter the veterans who he later termed "insurrectionists" animated by the essence of revolution.[4]

Again the administration, this time Republican, refused to question the surveillance tactics of the Army and again it came under much criticism for the activities of the military in the next election. Criticism of the military drove G–2 underground once more. Intelligence officers were instructed to be discreet in their activities so as to prevent disclosure of the Army's surveillance Again without seeking the approval of their civilian superiors, they continued to gather information on the political activities of civilian groups.

In 1936. G–2 began to develop new civil disturbance contingency plans. One of the most elaborate was the intelligence plan for the Sixth Corps Area which encompassed Illinois, Michigan, and Wisconsin. This was an area of strong isolationist sentiment and aggressive labor organizing. The Sixth Corps plan called for the collection and indexing of the names of several thousand groups, such as the American Civil Liberties Union and pacifist student groups which were labeled as communist subsidiaries. Sources of information were to be the Justice Department, the Treasury Department, and the Post Office as well as local state police. In addition, agents were told to contact private intelligence bureaus run by corporations such as General Motors which paid almost a million dollars to the Pinkerton Company between 1934 and 1936 to conduct labor espionage and to sabotage the organizing efforts of the United Auto Workers. Like other G–2 offices at the corps level, those in the Midwest kept watch on pacifist and civil liberties groups because Army intelligence had decided that the existence of these political groups helped more radical groups which might be a direct threat to the government or the military. In other words, the military decided what kind of political activity needed monitoring.

In those days, when the public thought that Army intelligence had been contained. G–2 officers were making confidential reports on the American Federation of Labor and the Congress of Industrial Organizations, and spot reports on communist activities. Ralph Van Dieman, the World War I chief of the MID who had retired to San Diego in 1929, set up his own master anti-communist files and acted as a country-wide clearing house for domestic intelligence. Because the Van Dieman files, now in the hands of the Senate Internal Security Subcommittee, have not been made public, it is not known exactly what his relationship to G–2 was, but it is known that he received reports from G–2 as well as from the FBI, local police, and volunteer groups like the American Defenders. Thus G–2 was able to maintain its structure intact and to continue to define its mission at home without civilian guidance during the inter-war years.

WORLD WAR II

After France surrendered to Germany in the summer of 1940. G–2 urged corps area and departmental commanders to collect domestic intelligence for counter-fifth column plans but agreed to rely primarily on Justice Department information. President Franklin Roosevelt was alert to the dangers of letting Army intelligence expand freely on the crest of espionage and fifth column fears but after the United States officially entered World War II in December 1941 that became increasingly difficult. Although the FBI maintained nominal control over internal security during the war, Army intelligence did not cease to function domestically. G–2 continued to collect political intelligence for War Plans White.[5] It reported on radical labor groups, communists, Nazi sympathizers, and "semi-radical" groups concerned with civil liberties and pacifism. The latter, well intentioned but impractical groups as one corps area intelligence officer labeled them, were playing into the hands of the more extreme and realistic radical elements. G–2 still believed that it had a right to investigate "semi-radicals" because they undermined adherence to the established order by propaganda through newspapers, periodicals, schools, and churches.

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[4] Roger Daniels, *The Bonus Marchers: An Episode of the Great Depression* (Westport, Conn., Greenwod, 1971), gives an account of the role of Army intelligence and MacArthur.

[5] Sixth Corps Area, Emergency Plan—White, December 1936, AG No. 386.

At first the G–2 did not challenge the supremacy of the FBI at home. Nor did it support the mass evacuation of the Japanese from the West Coast, apparently because of the restraint imposed by Chief of Staff George Marshall. But gradually the Counter Intelligence Corps of the Army (CIC) began to take a more active part in surveillance of civilians by including counter-espionage, counter-sabotage, loyalty investigations, security education, plant protection, and surveillance for treason, sedition, subversion, and disaffection among its duties. Collection of information on political groups once more became an important part of a preventative security program which used voluntary informants and investigators to collect information. Preventative plans called for recruitment of the American Legion, Veterans of Foreign Wars, and other "patriotic" organizations to help watch the home front. A delimitation agreement set up with the FBI had already given CIC agents wide latitude but even these wide limits were exceeded as the military began to demand more control over industrial labor.[6]

How extensive this military wartime surveillance came to be will not be known until all the files are open. But how far it mingled with civilian security work can be seen from a report later made on Van Dieman's San Diego files. By fall 1944, Van Dieman's agents were reporting on communist meetings, on adult discussion classes of the First Unitarian Church, on activities of aircraft labor unions, on Democratic rallies at a local junior high school, and on private groups within private homes. He was receiving copies of G–2 reports from all parts of the country. The commanding general at the Marine Corps Base in San Diego and the commander of the Eleventh Naval District were sending him reports on communists. He was distributing copies of his reports to military intelligence offices in Los Angeles and to the FBI in San Diego.

COLD WAR ERA

With the end of war, the military intelligence once again refused to demobilize its home front army. Again Van Dieman's files may be taken as a measure of the continuance of military surveillance of civilians. He received reports on the National Urban League, the Youth of All Nations, on labor unions, on scientists, on movie stars. Information from military intelligence reports in the Van Dieman files found its way into the hands of selected politicians and to selected members of the House Un-American Activities Committee in Washington and of the California Un-American Activities Committee in Sacramento. Later G–2 Tokyo, which survived and flourished under General MacArthur in Japan, leaked confidential records to right-wing publicists who used them as the basis of political campaigns against the Democratic policies. General Charles Willoughby, while still chief of G–2 Tokyo, launched his own investigation of American political groups to link them to an international communist conspiracy.

During the Korean War, military intelligence set up a central records facility at Fort Holabird, Maryland, where it began to catalogue domestic and foreign reports from military and civilian investigative agencies. In 1952, when Van Dieman died, a large portion of his vast files with information on 125,000 individuals was also taken over by Army intelligence. In addition, Army intelligence received information from counter-intelligence groups within National Guard units, such as the miniature Counter Intelligence Corps established by the California Adjutant General throughout that state.

Again, we can only estimate the effect of Army surveillance during the Cold War because information is not yet available, but the use of Army intelligence records and the campaigning of former intelligence officers did much to cultivate Americans' fear of surversion and to provide the basis for the growing power of the military at home.

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[6] The only information yet available on World War II is in Victor J. Johansen "The Role of the Army in the Civilian Arena, 1920–1970," U.S. Army Intelligence Command Study (1971).

CIVIL RIGHTS ERA

By 1956, the Department of the Army was claiming some continuous peacetime responsibility for collecting information on subversive groups. When President Dwight Eisenhower mobilized troops in 1957, the Counter Intelligence Corps preceded federal troops by two weeks to Little Rock to watch the school and report on local press coverage. The G–2 used the CIC of the 4th Army, intelligence staff officers from the Airborne Division, and FBI agents indiscriminately in the hectic days which followed. Military counter intelligence personnel had charge of surveillance of the nine black youths enrolled at Central High School and of monitoring the Ku Klux Klan and other potential trouble makers. Surveillance in this case continued on the orders of the Secretary of the Army after regular Army troops had been replaced by federalized National Guard. The next year, a Strategic Capabilities Plan restricted the use of intelligence personnel in monitoring civil disturbances until the President judged deployment of troops seemed imminent.

During civil rights activities in Montgomery, Alabama in 1961, the Army developed plans which assumed the Continental Army Command would conduct civilian investigations in domestic emergencies resulting from civil disturbances, and which allowed the Army to employ agents to collect information on civilians when the use of federal troops was "probable." Army agents could only operate within the investigative jurisdiction of civil authorities with specific authority from the President as Commander-in-Chief.

The Army was not called into Montgomery in 1961. In 1962, however, members of the 111th Intelligence Corps group conducted covert investigations of civilians, apparently in violation of their directive which called for specific authority from the President. Agents probed "extremist" groups, the reaction of civilians to troop movements, investigated "agitators," and compiled "black, white and gray lists." At the same time, agents failed to assemble adequate reconnaissance information.

A 1963 Continental Army Command plan left surveillance of civilians in the hands of the FBI but specifically authorized the military to file spot reports "as required" on events which might develop prior to the implementation of the plan. Ordinarily civil disturbance information was to be collected mainly through liaison with civilian authorities and through news media reports but an Army commander, if he felt the situation warranted it, could order covert operations if coordinated with the FBI. This plan removed surveillance from central control, allowing the same decentralization which had in the past led to serious invasion of the rights of citizens. In 1965, when this early warning system was transferred to the Army Intelligence Command, the Continental Army surveillance system continued in violation of regulations and without the knowledge of senior Army commanders. Thus the stage was set once more for the expansion of military surveillance of civilians during the next home front crisis.

CONCLUSIONS

In 1967, as I was finishing my book on World War I, it was already evident that Army intelligence had begun a vast surveillance program alarmingly similar to that begun fifty years before. I urged then that the line between civilian and military authority be clearly demarcated. Surveillance again occurred at home with almost no civilian control. In 1970, there were also parallels with 1919 when those who questioned military surveillance of civilians found Army intelligence and its supporters intransigent, willing to use subterfuge, ready to wait out press criticism, and able to plead secrecy to keep its activities beyond scrutiny.

Surveillance of civilians by the military took place during every major home front crisis between 1917 and 1967 regardless of which party was in power. It occurred with almost no civilian control because civilian officials, even those charged directly with the affairs of the War Department or

Defense Department were unable to effectively monitor the operations of military intelligence agents. As the military bureaucracy grew and became more technologically efficient, the difficulty of civilian control became greater. Meanwhile, the practice of the military of defining its mission of civilian surveillance in the broadest possible terms and moving in times of crisis from countering espionage to countering political dissent continued. Without further institutional safeguards to control military surveillance it seems highly likely that this practice will not only continue in the future but become an increasing threat to the constitutional rights of civilians.

"S. 2318 AND THE MILITARY'S LEGITIMATE INTELLIGENCE NEEDS." A STATEMENT BY PROFESSOR CHRISTOPHER H. PYLE FOR THE SENATE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS, APRIL 9, 1974.

On February 24, 1971, I had the honor of testifying before this subcommittee at its hearings on Federal Data Banks, Computers and the Bill of Rights. At that time I sketched out the history of the Army's surveillance of civilian politics during the late 1960's and spoke of the need to bring it under control.

Since that time, much has happened. The Department of Defense has issued regulations attempting to curb the stateside intelligence operations of all branches of the armed forces. Army intelligence has destroyed files on thousands of politically active, law-abiding citizens, and the Army Intelligence Command, which did most of the unauthorized surveillance, has been scheduled for deactivation.

At the same time, the Department of the Army has not been entirely successful in its cut-back efforts. While its top officials have been attempting to sell their new policy against surveillance to reluctant intelligence officers within the United States, military intelligence units have continued to monitor the political activities of Americans living abroad.

I will not take the time here to describe those activities. They are well documented by the testimony of John H. F. Shattuck of the American Civil Liberties Union and by Andrew Hamilton's recent article in the *New Republic* ("Shut Up, Soldier: The Watch on the Rhine," March 30, 1974, pp. 13–15).

Nor will I recount what I believe to be the distinct threats to liberty and privacy posed by the surveillance and the data banks it generated. They are well discussed in the testimony presented by Barry Mahoney on behalf of the Association of the Bar of the City of New York and by this Subcommittee's past reports.

Instead, I would like to focus my attention on what I believe to be the central, and most difficult question, now facing this subcommittee: What are the military's legitimate domestic intelligence needs?

If it were possible to define with precision each and every interest to be protected, and each and every kind of monitoring to be prohibited in the interest of preserving liberty and privacy, it would not be necessary to address this question. A carefully worded prohibition would suffice. Unfortunately, the problem is not that easy. Even the most ardent civil libertarians must concede that there are occasions when the military has a right to information touching on the politics of persons not affiliated with it. An espionage case involving Communists is an obvious example; attempts by an anti-war group to persuade servicemen to desert is another.

A bill which does not draw careful lines around the military's legitimate and illegitimate informational needs directly threatens the efficiency of government. It also endangers the liberty and property of military personnel, who must make judgments about the law's meaning in the course of carrying out their assignments.

This second danger concerns me most at this time. The government will not go to jail if the law is misinterpreted, but some intelligence agent may, through no fault of his own. Thus, if Congress is to accord due process to government employees while protecting political dissenters, it must state with particularity those investigative and record-keeping activities it does not intend to prohibit.

I. THE MILITARY'S DOMESTIC INTELLIGENCE NEEDS

It seems to me that the military's domestic intelligence needs can be broken down into five basic categories: civil disturbance intelligence, counterintelligence, criminal intelligence, security intelligence, and command intelligence. There is nothing watertight about these compartments; operations begun under one often flow very quickly into the others. But the categories are useful for analytical purposes.

Civil Disturbance Intelligence

During the late 1960's there were three basic kinds of civil disturbances that called for a military response. These were ghetto riots, mass demonstrations, and disruptions of military installations or activities. During the early 1960's there was a fourth category involving interference with the enforcement of federal court orders. It is conceivable that the government might sometime be faced with a fifth: para-military or military resistance to lawful authority of the sort now occurring in Northern Ireland or that occurred in the United States during the Civil War.

Each of these kinds of "disturbances" involves a mixture of political activities, some of which may be constitutionally protected and some of which may be criminal and violent, and each poses a different mixture of problems for the military.

Ghetto riots. The heaviest demand placed upon the military in recent years has been for troops to support civilian law enforcement agencies incapable of controlling mass rioting. In such situations the Army has found a clear need for three kinds of intelligence: *reconnaissance* of the riot (or potential riot) area, *advance* (or "early warning") *intelligence* on escalating violence which threatened to outstrip local and state police and military resources, and *tactical intelligence* on the targets and activities of rioters.

The Army also assumed that it had a need for *personality and organizational intelligence* for the purpose of identifying individuals and groups that might incite riots or participate in them. This assumption turned out to be in error. None of the riots of the late 1960's was planned or led by identifiable persons or groups, and few were marked by organized criminal activity directed against the authorities. This is the unanimous conclusion of the military and civilian histories of the era and of the intelligence analysts I have interviewed. The conclusion is confirmed by the Kerner Commission report and echos the findings of every major riot commission for the past half century.

Thus, the Army had no need for mug books, potential round-up lists, or large data banks on persons thought to be prone to rioting. Nor, in fact, were any of these records ever used at command headquarters or by units in the streets. What information military commanders needed to know about racial politics in the riot areas they received from civilian politicians and intelligence analysts who relied primarily on the press.

The major justification for civil disturbance intelligence offered by Army intelligence was that detailed information on incidents, organizations, and individuals was needed for planning purposes. Reports on civil rights demonstrations and ghetto altercations were collected on the theory that examination of their nature and frequency might reveal trends. The idea apparently originated with an after-action report prepared by Cyrus R. Vance following the Detroit riot. Vance, who was the President's representative to Detroit, recommended the analysis of incident reports to see if patterns could be discerned which might predict riots. He also proposed the development of a "normal incident curve" of ghetto crime against which apparent increases in violence could be compared. The need for such information, as he saw it, was at the local level, and the proper people to collect it, he believed, were the police. Unfortunately, his report to the President did not emphasize that point, and Army intelligence responded with a nation-wide incident reporting system. The reports were funneled, among other places, to the Continental Army Command at Fort Monroe, Virginia, where intelligence analysts attempted to construct a weekly "Dow Jones" average of violence in the nation as a whole. The exercise was a waste of time, of course, because a national average could not help the Army to predict where and when the next major riot would break out. At Fort Holabird, the home of the Army Intelligence Command, wiser heads prevailed and the idea of a computerized barometer of racial tensions was quietly shelved.

The collection of incident reports on minor altercations also was justified on the theory that they might give early warning of where and when riots would break out. In point of fact, the reports did not give the Army analysts any better advance notice than top Justice Department officials, who relied more on personal contacts with community leaders.

When the decision to call out federal troops was contemplated, the President, the Attorney General, and the Under Secretary of the Army did not turn to Army intelligence for information and advice. They relied instead on the observations and judgment of their own personal representatives at the scene. Since federal troops could not be deployed until state authorities had demonstrated their lack of resources, there was time for a personal reconnaissance by high government officials and their aides. While the civilians were making their reconnaissance, stand-by riot units were alerted and sometimes prepositioned at nearby bases.

The military's own after-action reports of the riots of the late 1960's clearly demonstrate that the Army's greatest advance requirement was not for personality or organizational data pertaining to the politics of the ghettos, but for *reconnaissance* and *liaison data.* What it needed most were *city packets* of maps and other records describing potential approach routes, the height of overpasses and the strength of bridges, information on potential riot areas and bivouac sites, the addresses and telephone numbers of local law enforcement officials, and the frequencies used by police and National Guard radio networks.

Unfortunately, reconnaissance and liaison work often took a back seat to the investigation of individuals and organizations, because investigating was what military intelligence was most accustomed to doing. This sometimes left troop commanders gravely unprepared for riot duty. For example, when General Throckmorton entered Detroit at the head of a joint force of 10,000 Army and National Guard troops, he had only a gasoline station map to guide him. (He and his troops did not even share the same company's maps). Back at the Pentagon, the officers in the war room struggled to follow the action in Detroit on a map which recorded contours and elevations in great detail, but omitted city streets.

The second urgent need of riot units was for *tactical intelligence:* information on mobs, fires, and potential targets of looting or damage. Here again, Army intelligence's obsession with subversion limited the production of useful intelligence. The first items which the intelligence analysts plotted on the situation maps at the Pentagon were power plants, radio stations, and armories—the traditional targets of Communist insurgents bent on seizing governments. Meanwhile, apolitical rioters in Detroit happily looted stores and supermarkets.

During the riots, there were reports of sniping which seemed to confirm the view that conspiracies lurked behind the riots. Most of these reports turned out to be false or exaggerated. When the smoke cleared, it was the civilians who had been shot with government bullets. Insofar as there were snipers, they were attended to without the help of dossiers or mug books.

Unfortunately, the riot manuals used by the Army and FBI today still depict the typical mob as an instrument of revolution, manipulated by well-coordinated agitators. Military and civilian planners, transfixed by the rhetoric and aspirations of "revolutionary" groups, continue to ignore their own experience and the indisputable fact that America has yet to experience an organized ghetto riot.

Mass demonstrations. The second major justification for the Army's civil disturbance intelligence program was that it was needed to give early warning of the intentions, capabilities, and probable courses of action of the leaders of mass demonstrations.

During the late 1960's, there were five mass demonstrations of particular concern to the Army. These were the anti-war March on the Pentagon in October 1967, the Poor Peoples' Campaign (including Resurrection City and Solidarity Day) in the Spring of 1968, the demonstrations at the Democratic

National Convention that summer, the Counter-Inaugural demonstrations in January 1969, and the anti-war Moratorium March on Washington in November 1969. In each instance, the key problem for those government officials who were determined to avoid violence and permit lawful protest was to strengthen the leadership of non-violent organizers and to structure the mode of protest so as to defuse tensions and limit confrontations between demonstrators and troops.

There was no need for extensive files on or the infiltration of the anti-war and civil rights groups which organized the major marches on Washington. Most of these groups were open about their plans, as indeed they had to be to lead the thousands of unorganized persons they hoped to bring together. Newspaper reports of press conferences, handbills, and other easily obtained publications outlined most of their objectives and tactics. The civil rights groups worked closely with the Community Relations Service of the Justice Department; and the anti-war groups disclosed their plans while negotiating for parade and demonstration permits. The most serious danger of organized violence came from fringe groups like the Yippies and SDS, and they were watched closely by civilian law enforcement agencies. The most serious danger of unorganized violence came from government officials who deliberately predicted violence in order to deter moderate protesters from participating.

Detailed personality and organizational information also was not necessary to estimate the size of the crowds. Advance estimates were obtained from bus companies and railroads (sometimes in an unnecessarily intimidating manner) by FBI and Army agents. Government agents also made vehicle counts on the highways coming into Washington while military planes took aerial photographs of the assembling crowds.

Infiltration of demonstrating groups was standard practice for many government agencies, including the Army, but there is little evidence that the reports obtained were of much use. (Had the groups been intent on doing violence, the reports might have been different, but even then, there is no reason to believe that the information had to be collected by the Army).

The approach of civilian officials responsible for supervising Washington's response to mass demonstrations was to go out into the streets and see for themselves. For example, during the November 1969 Moratorium demonstrations Army General Counsel Robert E. Jordan III waded into crowds at DuPont Circle with his own team of radio-equipped lawyers. Jordan was not about to trust reports from agents he did not know so long as it was possible for him to see the situation for himself. During the March on the Pentagon in 1967, top military and civilian officials observed the events from their windows and over closed-circuit television filmed from the building's roof.

Chicago was a different problem. There the Yippies and city officials conspired to create a situation in which violence was inevitable. Early warning intelligence on the intentions of the various demonstrating groups was not very helpful because the authorities deliberately destroyed the leadership capacity of moderate groups by refusing to permit them to march near the convention center or camp in the parks. At the same time, the Yippies skillfully inflamed official expectations of violence with outrageous threats that were totally beyond their ability to carry out. On this occasion, analysts at the Army's Counterintelligence Analysis Branch took note of the dwindling numbers of protesters determined to go to Chicago and the size of the Illinois National Guard to rightly predict that federal troops would not be required. Their prediction, however, was not conveyed to President Johnson who, in any case, would probably have ignored it just as he ignored the counsel of the Attorney General. Political risks, rather than intelligence estimates, were the decisive factors in the President's decision.

The key point which should be borne in mind about the mass demonstrations is that while they required reconnaissance and liaison data for planning and tactical intelligence about the route or place of protest, the mode of demonstration, and the leadership capacities of the organizers, they did not require political surveillance by the military. What background information the Army needed to brief its generals about the politics of the situation was easily obtained from civilian officials and the press.

Disruptions of the Military. The third justification for the Army's surveillance of civilian protest groups was the need to protect military posts and activities from disruption and obstruction by anti-war and anti-military groups. The obstruction of a troop train in Oakland, California, the disruption of a celebrated court-martial in Texas, a large antiwar protest at Fort Dix, New Jersey, and the threatened confrontations at military installations throughout the country at the time of the October 15, 1969 anti-war Moratorium, all have been cited by intelligence officers as grounds for keeping tabs on militant anti-war groups.

The issue here clearly is not the military's right to know if some group plans to storm the gates of one of its forts, but the extent to which military intelligence agents should be sent out into the civilian community to investigate the plans of protest groups. Few people would question the right of Army intelligence officers to read about such plans in the newspapers, or to receive advance warning of them from civilian law enforcement agencies. Similarly, there is no reason to question the Army's right to have observers stationed on post, or on the streets near the post, to give early warning of the demonstrators' arrival. The problem comes when military intelligence wants to infiltrate a group because it lacks confidence in the information received through liaison from civilian agencies. This is particularly likely to occur overseas where the local police services are in the hands of foreign governments which may not be concerned about demonstrations by Americans on or about U.S. military installations.

Interference with court orders. During the late 1950's and early 1960's, the U.S. Army was called out twice and alerted on several other occasions to assist with the enforcement of federal court orders directing the desegregation of schools in the South. At Little Rock Central High School in 1957 and at the University of Mississippi in 1962 federal troops faced hostile crowds of citizens angry over the federal intervention. In Little Rock, Army intelligence agents and FBI agents worked together to investigate rumors of possible attacks on federal troops and the nine black children they were charged with protecting.

Where federal troops are lawfully assigned to enforce court orders, it is difficult to question the necessity or propriety relevant intelligence services. However, it is important that the role be viewed as a security function, and not as a license to collect personality and organizational data for use beyond the immediate mission.

Para-military and military resistance. The ultimate justification for focusing the civil disturbance intelligence effort on civilian political groups was the counter-insurgency theory. As the Assistant Chief of Staff for Intelligence said to his staff in the domestic war room at the height of the Detroit riot: "Men, get out your counter-insurgency manuals. We have an insurgency on our hands."

General Yarborough was wrong in that assessment, but his error does not relieve this Subcommittee of its obligation to determine the legitimate counterintelligence and combat intelligence needs of the military in times of rebellion or civil war, and to express them precisely in statutory terms.

One way to do this might be to define the protected rights in terms of the First Amendment distinction between the single expression of beliefs and the incitement or solicitation of others to take criminal actions. Another way would be to conceive of the military's informational needs in a martial law situation in terms of the laws of treason, espionage, sabotage, murder, and assault. A third would be to focus on the need of tactical combat units to know the intentions, capabilities, and probable courses of action of hostile forces, including guerrillas within their own lines. So long as the war-time needs of the military are viewed in these lights, S. 2318 should pose no threat to legitimate military operations.

Counterintelligcnee

The dominant mission of Army intelligence off the battlefield has traditionally been that of counterintelligence. Strictly speaking, the term implies countering the operations of foreign intelligence agencies bent on espionage, sabotage, and disruption. In practice, Army intelligence has recognized no such restrictions. In the absence of sufficient espionage and counter-espionage investigations to keep its agents busy, the Army has charged them with investigating the more amorphous subjects of "subversion" and "disaffection."

Nowhere in the lexicon of the intelligence corps is there a precise definition of either term. "Subversion" suggests active efforts by foreign agents or domestic revolutionaries to undermine the loyalty of soldiers to the Army and the country. "Disaffection" suggests the state of mind that makes a soldier an easy mark for a subversive solicitation. Together, the terms have been used to authorize outrageous abuses of investigative discretion. Military intelligence agents, like their civilian counterparts, have proven incapable of distinguishing between shades of dissent, or even between moderate, liberal, radical, and revolutionary groups. They have also demonstrated their ignorance of the basic First Amendment distinction between advocacy of the desirability of violence and solicitation of others to commit crimes. They have not viewed "subversion" within the military as the active solicitation of military personnel to violate lawful orders in the services of some foreign power or domestic revolution, but have equated it with any attack on the legitimacy of the military or those elements of the social and political order with which it has traditionally identified.

Similarly, the use of the investigative category of "disaffection" has led to the uninhibited surveillance of servicemen and their political affiliations within the civilian community. In theory, the term implies susceptibility to solicitation by enemy agents. In practice, it has supplied an investigative rubric under which many commanders have justified the use of intelligence agents to enforce their particular brand of discipline and morale. (See the section on "Command Intelligence" below).

It would greatly assist analysis of the subject matter of this bill if the term "counterintelligence" were confined to its narrowest and most precise definition, and such rubbery terms as "subversion" and "disaffection" stricken from the vocabulary entirely.

Criminal Intelligence

In defining the military's legitimate intelligence needs it also should not be forgotten that there are laws which military investigators must enforce. For example, Army intelligence agents are currently charged with investigating possible instances of espionage and sabotage; Army criminal investigators must look into potential violations of the Uniform Code of Military Justice. Thus, like all agencies charged with enforcing laws, the military services may sometimes collect "criminal intelligence."

Criminal intelligence, like counterintelligence, is a rubbery word that can be stretched to justify a wide range of investigative abuses. Properly conceived, it should be used only to refer to the opening stages of a criminal investigation by an authorized law-enforcement unit. Thus, when the Army's Criminal Investigations Division suspects that anti-war civilians are soliciting servicemen to disobey lawful orders, there should be no doubt about the legitimacy of its investigative interest.

At the same time, there should be no doubt that civilian law enforcement agencies within the United States should be given full responsibility for the civilian side of such investigations. Except in rare instances, military investigators should concentrate on persons subject to the UCMJ and limit their surveillance of civilians to the territorial boundaries of military posts.

Respect for the primacy of civilian agencies off-post would also mean that activities like the anti-war coffeehouses that sprang up around military installations in the United States during the late 1960's would be off-limits to military intelligence, but that criminal investigators assigned to nearby posts might legitimately receive reports from civilian law enforcement agencies on cases in which the coffeehouse proprietors are suspected of unlawfully soliciting GI's to disobey laws or commit crimes. It would also mean agents could not be loaned to civilian agencies for undercover duty except in joint investigations and could not be used for intelligence duty at national party conventions.

Overseas, the absence of a well established force of civilian investigators enforcing American law increases the pressure for off-post investigative activities in cases involving the joint political activities of American soldiers and civilians. In Germany, for example, Army intelligence apparently infiltrated the Goessner Industrial Mission because American clergymen there were counselling servicemen. The clergymen insist that they were not counselling the soldiers to desert or otherwise deny the authority of their officers, but what if they had? Would it be improper for military intelligence to undertake such an investigation?

The use of intelligence agents rather than criminal investigators suggests that the Army did not expect evidence of criminal conduct to be uncovered, so perhaps the offense lies in using the wrong team of Army agents. But suppose Army criminal investigators had been used instead? Should S. 2318 contain any restrictions on the nature and scope of their inquiries?

Security Intelligence

The fourth category of domestic intelligence activities of the military I have chosen to call "security intelligence." By this term I mean to refer primarily to background information on politically active groups amassed to facilitate loyalty determinations under the personnel security program. However, I also recognize that the term can be used to encompass information about potential disruptions directed at military installations or activities by anti-war and anti-military groups. Since the bulk of the latter category has been discussed under civil disturbance intelligence, I shall confine my discussion here to the so-called "subversives files" maintained by various military intelligence agencies for general reference and to characterize the "loyalty" of political groups with which persons being considered for security clearances may be affiliated.

The "subversives files" of the Army Intelligence Command are described at pages 21–23 of the subcommittee's 1972 staff report entitled "Army Surveillance of Civilians: A Documentary Analysis." There are two facts about these files which should be borne in mind. First, they are crammed full of unverified newspaper clippings, handbills, and membership lists, which, in the main, are useless. Security clearance adjudicators who want to know if a particular organization is considered "subversive" find it easier to refer to short one to three-page "characterizations" prepared by the FBI or Army analysts. Second, characterizations which attempt to define the poltical legitimacy of various groups support the denial of security clearances on the basis of "guilt by association." The only fair way to proceed is to grant or deny a clearance solely on the basis of original investigations focused on the activities of the individual under consideration. Thus, the characterizations and the files which back them up are not needed if the Army intends to be fair to its own.

Command Intelligence

Finally, a word should be said about "command intelligence." The term is my own invention, and by it I mean to refer to a variety of investigations ordered by commanders to help maintain order, discipline, and morale among their troops and to inform themselves about political protests within the civilian community which may affect the security of their commands and the efficiency of their operations. It is a catch-all category which sweeps across all other categories, but poses some special problems of its own.

For example, there is no reason to doubt the right of a military commander to receive information about attempts by civilian organizations to obstruct delivery of supplies to his troops, disrupt armed forces entrance and examining stations, or burn down ROTC buildings. Investigation of these matters for the purpose of criminal prosecution normally will lie in the hands of civilian authorities, but commanders are entitled to sufficient information about them to adjust military operations accordingly.

A more difficult set of circumstances exists when the commander is confronted with legal efforts by civilians to proselytize his troops. The communications are protected by the First Amendment, but they may affect the way in which the commander runs the unit or handles the grievances of his men. Communications from some civilian opponents of war to servicemen may evolve into criminal solicitations designed to promote disrespect for authority, evasion of duty, desertion, and other crimes.

Thus, the effort to define a commander's need for information about civilian communications to his troops quickly leads to the complicated questions about the proper scope of the military's surveillance of dissent within its own ranks. Because the Subcommittee has chosen to concentrate its attention on the surveillance of civilians, I shall not discuss the military's needs in this area. except to note that the improper surveillance of civilians will not completely end until the political rights of servicemen receive equal consideration.

The foregoing discussion does not begin to enumerate all of the instances in which the collection or receipt of information by the military may involve reports on the political beliefs, associations, and activities of civilians. Hopefully. however, it will provide a base of knowledge about the military's intelligence needs from which the line-drawing exercise of legislative drafting may proceed.

II. SOME GUIDES TO REDRAFTING

S. 2318 goes a long way towards protecting the rights of civilians guaranteed by the First Amendment and I support it heartily. At the same time, I believe there is room for improvement. What follows are some suggestions for redrafting.

The Prohibition

Section 1386(a) of the bill sets forth a general prohibition declaring who should not do what to whom, and how. It provides:

"(a) Except as provided in subsection (b) of this section, whoever being a civil officer of the United States or an officer of the Armed Forces of the United States employs any part of the Armed Forces of the United States or the militia of any State to conduct investigations into, maintain surveillance over, or record or maintain information regarding, the beliefs, associations, or political activities of any person not a member of the Armed Forces of the United States, or of any civilian organization, shall be fined not more than $10,000 or imprisoned not more than two years, or both."

Persons obligated. The prohibition would apply only to "civil officers" [which section (c) defines as "any civilian employee"] and "officers of the Armed Forces." However, since much of the initiative for the surveillance excesses of the late 1960's came from sergeants and warrant officers, it would make sense to cover them too. The prohibition also should be rephrased to burden officers of the militia since some National Guard bureaus have created domestic intelligence networks of their own. In addition, the term "employs" probably should be changed to "causes" to avoid semantic quibbles by defense lawyers.

Activities prohibited. The enumeration of activities prohibited in subsection (a) is a substantial improvement over prior drafts of the bill in that it explicitly prohibits recordkeeping as well as surveillance. The prohibition against the maintenance of information also may be read to cover the receipt and redistribution of information orally, although perhaps that contingency ought to be guarded against too. An additional phrase or term might be added to forbid the hiring of private detectives for surveillance purposes, as occurred in the Civil War.

Activities protected. The bill's protection of "beliefs, associations, or political activities" seems to be both too broad and too narrow. There are no adjectives to describe the kinds of beliefs and associations to be protected, yet there is an adjective limiting the bill's prohibition to "*political* activities." One way to solve the problem would be to move the adjective "political" over to modify beliefs and associations too, but that also would be too narrow. Much of the activity monitored by the military can not be called "political" within the plain meaning of that word. Adding "social and religious" might help some; so too would a provision to cover "private affairs."

Still another way to convey the essential purpose of the bill would be to define the matters to be protected in terms of the First Amendment. In so doing, however, it would be important to phrase the bill so as not to limit the definition of Constitutionally protected matters to those beliefs, associations, and activities, which can now be vindicated in civil suits under the currently restrictive rules of standing.

Persons protected. As the bill now stands, the only persons protected are those who are not members of the Armed Forces. This formulation is broader than that used by the military in its current regulations (which speak of persons "not affiliated with" the Armed Forces), and narrower than the class of persons subject to the surveillance and entitled to protection under the First Amendment. Extending the bill's coverage to servicemen would be desirable but would raise a host of problems which have not yet been investigated fully by the Subcommittee. At a minimum, the bill should not imply a backhanded approval of the military's surveillance of its own people.

Criminal penalty. Because S. 2318 is intended to extend the posse comitatus act's ban on the use of troops to enforce civilian law, it contains a criminal penalty. Like the posse comitatus act, this penalty is not likely to be enforced. It should be retained to emphasize the seriousness with which Congress regards the prohibited activity. At the same time, every effort should be made to devise civil remedies and administrative procedures that will ensure full compliance with both the letter and the spirit of the bill.

The Exceptions

Subsection (b) of the bill enumerates four instances in which "the provisions of . . . [section 1386] shall not apply." These exception include 1) actual military operations pursuant to the riot and rebellion laws (10 U.S.C. Secs. 331–333), 2) investigations of criminal conduct committed on military installations or involving offenses to the property of the United States, 3) suitability investigations of employees and prospective employees of the Armed Forces, militia, and defense facilities, and 4) surveillance operations by the militia when not in federal service. I will discuss each of these exceptions in turn, and suggest some additional exceptions.

The exception clause. The great danger in writing exceptions to a bill of this sort is that the exceptions may turn into backhanded authorizations of conduct which the Congress means to forbid. One way to prevent that here would be to change the opening clause to read: "Nothing in this section shall be construed to prohibit, or to provide authority for, the following investigative or data-keeping activities . . ."

The riot exception. Subsection (b)(1) provides that the prohibition of this bill shall not apply to the use of the Armed Forces or the militia "when they have been actually and publicly assigned by the President to the task of repelling invasion or supressing rebellion, insurrection, or domestic violence pursuant to the Constitution or section 331, section 332, or section 333 of title 10 of the United States Code."

It seems to me that this exception is at once too broad and too narrow. As the foregoing analysis of the Army's needs suggests, personality and organizational data are not needed by riot units. Therefore, the bill should not allow riot units to collect it. By clearly forbidding its collection in the course of riots, Congress will free intelligence agents for more useful work on reconnaissance and liaison duty.

At the same time, the riot exception would appear to bar the receipt of information from civilian law-enforcement agencies about an incipient riot in advance of the President's order directing the deployment of troops. Nothing in the bill should forbid civilian authorities from keeping the military well informed and up-to-date on fast-breaking developments.

In addition, the provision would appear to forbid the existence of a Pentagon-based civil disturbance analysis unit like the domestic section of the Counterintelligence Analysis Branch (CIAB). I believe that would be a serious mistake. It is too much to expect military commanders to leap into domestic strife without a staff to inform and advise them. CIAB during the late 1960's showed great coolness in crisis situations and provided intelligence estimates which were, by and large, more realistic than those produced by the Justice Department's Interdivisional Intelligence Unit (IDIU). CIAB also provided an alternative source of advice to decision-makers who were continually pressed with dire forebodings of riot and rebellion by the staff of the Directorate for Civil Disturbance Planning and Operations (DCDPO) (now the Directorate of Military Support). I see no reason why the Pentagon should not have a small staff of intelligence analysts during periods of civil disorder which can sort out and digest reports from the civilian agencies and the press for the Army's civilian and military leaders. In tense moments, distinterested counsel from a staff of this sort might avert a fatal overreaction on the part of uninformed commanders.

There is no evidence that any of the information in CIAB's data bank was ever used or distributed in ways which could injure the rights of individuals or organizations. However, the possibility was always there, because CIAB's microfilm archive was bloated with highly sensitive FBI and Army reports on the personal and private lives of individuals. Since such information is not needed in riot situations, S. 2318 should forbid its retention, while also permitting the military to maintain an analytical unit with authority to receive, analyze, and hold for a reasonable period of time, current reports on civil disorders from appropriate law enforcement agencies and the press.

The military also should be permitted, at the request of the Department of Justice, to send observers to the scene of a possible riot to help with reconnaissance and planning.

The criminal investigations exception. The second exception in subsection (b) of the bill would allow the military "to investigate criminal conduct committed on a military installation or involving the destruction, damage, theft, unlawful seizure, or trespass of the property of the United States." This exception also appears to be to broad and too narrow.

The clause exempting the investigation of criminal conduct on military installations implies a belief that the military may never carry its criminal investigations off-post. As a general rule applicable to the United States, that is true; crimes committed off-post in the United States by military personnel are usually investigated by civilian agencies. However, S. 2318 has no geographical limitations. Thus, where Status of Forces Agreements do not require that servicemen be tried in foreign courts for off-post crimes, nothing in the bill should imply an intent to leave such crimes unpunished by the military. Revision of the opening clause of the subsection to clearly express an intent not to change the current situation regarding criminal investigations would probably solve this problem.

The first clause of the second exception also might be read to imply an intent to forbid the military to investigate instances of suspected sabotage at defense facilities located in the civilian community. Undoubtedly the purpose of the clause is to reiterate the primacy of civilian agencies in the investigation of crimes committed by civilians within the civilian community, but nothing in the bill should appear to prohibit inquiries by responsible military authorities into the nature of the crime and its effect, if any, on military personnel or operations. Nor should the bill imply an intent to bar appropriate military commanders from receiving status reports on criminal investigations by civilian authorities.

An example may help to illustrate this point. Suppose a political group dynamites electric power lines supplying a defense facility in a civilian community which directly supports a local military installation. The crime is not committed on the military installation or by persons subject to the Uniform Code of Military Justice. Thus the basic criminal investigation must be conducted by civilian authorities. At the same time, information about the crimes, the methods in which they were carried out, and the motives of the suspected bombers may be directly relevant to security efforts by the military commander. He should be free to make inquiries and receive information for that specific purpose.

The second clause of the criminal investigations exception would appear to authorize military investigations whenever anyone destroys, damages, steals, unlawfully seizes, or trespasses upon the property of the United States. If viewed as a positive grant of authority, this clause would transform the Army into a national police force. Obviously, that is not the intent of the bill.

The suitability investigations exception. An exception for political information legitimately collected in the course of a security clearance or pre-employment check of a particular person is entirely appropriate so long as it is not worded as a positive grant of authority. Any legislation giving Congressional blessing to the security clearance program should only be adopted after the most extensive hearings and staff investigation.

The state militia exception. The final exception in the bill would permit political surveillance and data keeping by "the militia of any State" when "under the command or control of the chief executive of that State or any other appropriate authorities of that State." This exemption seems both unwise and illusory.

The exemption is unwise in that it might be construed to permit the military to achieve through the National Guard, which is heavily funded by the federal government, what it would not be able to do by itself. If the National Guard were not interested in political surveillance, that would not be a problem, but the military departments of at least two states (Oklahoma and California) have exhibited great interest in monitoring protest politics.

The exemption also is illusory because S. 2318 would make any National Guard officer who collected the forbidden information while in state service an instant criminal upon federalization. Thus the Subcommittee might wish to alert National Guard intelligence officers to the risk this bill poses them by forbidding the expenditure of any federal appropriations received by the Guard to carry out the prohibited surveillance.

Some Proposed Exceptions

In marking up this bill, the Subcommittee may find it helpful to group exceptions to the prohibition in two categories: 1) exceptions permitting certain kinds of investigations, and 2) exception which do not permit independent military investigations, but which do authorize the receipt of certain kinds of information from other agencies under specific restrictions defining the nature of the information, how long it may be retained, and how it may be used and distributed. The Subcommittee also may find it helpful to prepare one list of excepted investigative and data-keeping activities to be included in the bill, and another to be published in its report.

The following are some investigative and/or data-keeping activities which I believe ought to be considered as candidates for exceptions, either in the bill or in the report. The exceptions are grouped according to the categories of intelligence needs set forth above in the first section of this statement.

Civil disturbance exceptions. The bill should not preclude the military from:

1. receiving information from the Justice Department, (and from municipal and state authorities once troops have been alerted for potential riot duty), bearing on the riot situation, even though that information may bear tangentially on constitutionally protected political activities;

2. receiving information from the Justice Department or other appropriate authorities on the status of permit negotiations for mass demonstrations where the military may have to play a role;

3. receiving information from local, state, or federal authorities about the intentions, capabilities, and probable courses of action of groups planning to demonstrate against the military on or just outside a military installation or activity.

4. observing such demonstrations from the installation or nearby.

5. collecting ordinary combat and counterintelligence (narrowly construed) on para-military or military groups within the United States which have raised arms against federal authority.

6. maintaining a Pentagon-based analytical unit for the purpose of monitoring press reports on civil disturbance and receiving reports from civilian law enforcement agencies relevant to civil disturbance which may affect the military in the performance of its mission, provided however, that this unit not be permitted to compile extensive files on politically active, law-abiding citizens, or to disseminate its reports widely. The sole function of the unit should be to inform and advise top military and civilian officials of pending or incipient civil disturbance situations which are likely to be of direct concern to the military in the near future.

7. sending observers, at the Justice Department's request, to potential riot areas, to assist with planning and liaison.

Counterintelligence exceptions. S. 2318 as now written appears to forbid the collection of political information in the course of an investigation of espionage or sabotage by foreign agents. Insofar as political information is part of a dossier compiled in the course of a criminal investigation, the investigation and retention could be authorized in a general criminal investigations exemption.

On the other hand, the investigation of espionage and sabotage also may be part of a counterintelligence operation where the military's purpose is not to prosecute, but to break up an enemy operation and "double" its agents back upon their foreign masters. If the word "counterintelligence" could be given a sufficiently narrow definition in the bill, it could be used to express this exception. The definition, however, should explicitly exclude terms like "subversion" and "disaffection" and should not encompass the surveillance of dissent within the military.

Criminal investigations exceptions. There should be no general exception for criminal intelligence operations. However, there should be an exception for ordinary criminal investigations which may touch upon political motives, associations, and activities. The provision might be worded to leave untouched military investigations of possible violations of the Uniform Code of Military Justice, military investigation of crimes committed by civilians on military installations, and the investigation or receipt by the military of information pertaining to joint investigations of crime, such as attempts by civilians to persuade military personnel (or civilian employees of the Armed Forces or militia) to violate the law or disobey lawful orders or regulations.

Security intelligence exceptions. There should be no exception which permits the establishment of massive "subversives files" in the military. Insofar as the subversive activity involves crimes, the investigation and data-keeping should be left with the appropriate law enforcement units.

At the same time, military commanders should be permitted to receive reports about politically motivated actions which may, or which have, disrupted military installations or activities, damaged military property, impeded the flow of military supplies, transportation, or communications, or resulted in harm to military personnel. Reports of this sort should be periodically destroyed to prevent the compilation of political data banks, and restrictions should be placed on them to prevent the contamination of security clearance dossiers or disclosure to persons without a legitimate need to know.

The unauthorized disclosure of national defense information also poses a security problem which should be the subject of a narrowly drawn exception.

Another exception should leave the military free to receive information on thefts of arms, ammunition or equipment, or the destruction of facilities, equipment or records belonging to defense contractors which may affect its mission.

Command intelligence exceptions. Without tackling the entire question of the surveillance of dissent within the military, the Subcommittee probably should specify those instances in which it does not seek to prohibit command intelligence operations, even though they may pick up information on civilian political activity. As I see it, these should be limited to the exceptions allowed for ordinary criminal investigations and the receipt of information generated by civilian agencies involved in joint criminal investigations.

Additional exceptions. There are several additional categories of information and investigations that also might be excepted by the Subcommittee's report from the prohibition of this bill. These include:

1. the maintenance of congressional and press liaison files compiled solely by the liaison personnel from overt sources and their own personal experience; and
2. the gathering of information on foreign nationals by U.S. military governments and armies of occupation for combat, civil disturbance, counterintelligence, security, law enforcement, and command purposes.

Restrictions on retention. Where exceptions to the prohibition permit the receipt of information on political and private affairs, restrictions ought to specify how long it may be retained. In some areas, it may not be feasible to specify time limits in the bill. However, where the military has received information in connection with a riot, demonstration, or disruption, the bill should provide that the records be turned over to civilian law enforcement authorities or destroyed within sixty days of the withdrawal of troops or the end of the disruption.

Restrictions on use and distribution. One of the most serious aspects of the CONUS intelligence program of the late 1960's was the indiscriminate way in which sensitive information about individuals and organizations was distributed throughout the military and law enforcement community. Thus restrictions on how exempted information may be used and distributed might be appropriate, either in the bill, or in the report's recommendations to administrators.

Remedies

Civil Actions, generally. As I read Section 2691, it would do nothing to change the definition which the Supreme Court gave to the "chilling effect" doctrine in *Laird* v. *Tatum*, 408 U.S. 1 (1972). A judge interpreting the term "aggrieved" in subsection (a) or "threatened with injury" in subsection (b) is given no hint that he should not follow Chief Justice Burger's opinion in that case which denied standing to persons who could only allege a present fear of future harm.

The purpose of Section 2691 should be to reverse the decision of the Supreme Court with a Congressional determination that anyone who has been the *subject* of military surveillance has standing to challenge it as a violation of this bill. The bill should amount to a legislative finding that any person who has been the subject of the prohibited activity has suffered an injury within the meaning of the "case or controversy" requirement of Article III of the Constitution. No proof of harassment, loss of employment, or defamation should be required of the plaintiff for the purpose of determining his right to sue.

An alternative to subsections (a) and (b) might read:

"(a) Whoever violates any provision of Section 1386 of title 18, United States Code, shall be liable to any individual or organization that, as the result of such violation, has been the subject of the prohibited investigation, surveillance, or data-keeping in an amount equal to the sum of:

(1) any actual damages suffered by the plaintiff, but not less than liquidated damages at the rate of $100 a day for each day during which the prohibited data-collection activity took place;

(2) such punitive damages as the court may allow, but not in excess of $1,000; and

(3) the costs of any successful action for damages, together with reasonable attorneys' fees as determined by the court.

(b) Any individual or organization that has been the subject of the prohibited investigation, surveillance, or data-keeping may bring a civil action against the United States to secure when appropriate, the following relief:

(1) injunctive and other relief directing the cessation of the prohibited activities;

(2) the deletion from any files kept by any department or agency of the United States of any information gathered as a result of the prohibited data collection activities;

(3) further judicial orders directing the expungement of such information from the files of state and local agencies and organizations to which it may have been communicated."

Class action. Section 2692 would grant standing to bring a class action to any person who "has reason to believe" that a violation of Section 1386 has occurred or is about to occur. It seems to me that this grant of standing is too broad, and might generate unnecessary and frivolous suits.

In addition, there does not appear to be any reason why all three civil remedies should not share the same test for standing: was the plaintiff a *subject* of the forbidden surveillance. This would reduce the number of persons who can bring a suit, but should not affect the likelihood of a prompt court test. Limiting standing to subjects of the surveillance also would reduce the risk of a court decision holding that the "reason to believe" test violates Article III of the Constitution by granting standing to one who does not have the requisite "personal stake" to raise a justiciable "case or controversy."

An alternative provision might read:

"Any individual or organization that has been the subject of data-collection activities prohibited by title 18, United States Code, may bring a class action pursuant to Rule 23, Federal Rules of Civil Procedure to enjoin the planning or implementation of the prohibited data collection activities and to assure the destruction of any unauthorized records."

Jurisdictional Amount

An additional section should be included in the bill to guarantee that no jurisdictional amount shall be required in order to initiate in federal court pursuant to sections 2691 and 2692.

CORRESPONDENCE

Department of Justice,
Washington, D.C., April 16, 1974.

Hon. James O. Eastland,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

Dear Mr. Chairman: This is in response to your request for the views of the Department of Justice on S. 2318, the proposed "Freedom from Surveillance Act of 1973."

The legislation would add a new section to title 18, United States Code, prohibiting the use of the Armed Forces of the United States or the militia of any State to investigate or maintain surveillance over the beliefs, associations, or political activities of any person except in connection with certain specific responsibilities of the Armed Forces. It would amend title 28, United States Code, to authorize individuals to bring injunctive and damage actions and to permit class actions to enjoin such activities. It would also amend the Posse Comitatus Act, 18 U.S.C. 1385, to extend that Act to all of the Armed Forces, including the Coast Guard.

It might be noted, that section 2 would not permit the use of the Armed Forces to maintain surveillance when the Armed Forces are being used to assist the Secret Service in protecting the President, Vice-President and foreign visitors pursuant to Public Law 90–331, since this function is not included among the exceptions to the basic prohibition.

In addition to the criminal penalties imposed by section 2, section 3 of the bill would authorize civil suits both for injunctions and damages. The Department of Justice opposes this provision as authorizing unnecessary and possibly harassing litigation. Even in those instances when section 2 would permit maintenance of surveillance, it is likely that suits would be filed under section 3 testing the authorization in each instance.

Section 5 would extend the Posse Comitatus Act, which presently refers only to the Army and Air Force, to all of the Armed Forces. "Armed Forces" is defined to include the Coast Guard as well as the traditional military branches. This would, in effect, prohibit the Coast Guard from carrying out its historic law enforcement duties. See 14 U.S.C. 89. We have no objection to including the other Armed Forces but suggest that the Coast Guard be expressly excluded from the Posse Comitatus Act.

For the foregoing reasons, the Department of Justice opposes the enactment of S. 2318.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. Vincent Rakestraw,
Assistant Attorney General.

Senate Subcommittee on Constitutional Rights,
Washington, D.C., April 6, 1972.

Hon. Melvin R. Laird,
Secretary of Defense, Department of Defense,
The Pentagon, Washington, D.C.

Dear Mr. Secretary: The Subcommittee has received complaints that active duty members of the Marine Corps stationed in Quantico, Virginia, have been assigned to assist local law enforcement in apprehending civilians suspected of violating narcotics laws in Prince William County.

Would you advise me under what conditions Marines can be assigned to investigative and undercover work for the enforcement of federal and state criminal laws? Would you also advise me as to the extent to which members of the Army, Navy and Air Force may be assigned to such duties?

It would be especially helpful to receive copies of the regulations for each of the Services governing this matter.

Sincerely yours,

Sam J. Ervin, Jr.,
Chairman.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., April 26, 1972.

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: The Secretary of Defense has requested that I respond to your letter of April 6, 1972, concerning a complaint you have received about active duty Marine Corps personnel being assigned to assist local law enforcement agencies in Prince William County, Virginia.

The particular incident to which we believe you refer occurred in about August 1971, in the vicinity of a shopping center in Manassas, Virginia. Authorities at the Marine Corps Base, Quantico, had been concerned for some time about keeping drugs of all kinds off the base and out of military hands. In late July 1971, information was received from local Prince William County police that some cars bearing Marine Corps "decals" had been observed in the Westgate Shopping Center in possible involvement with drug transfers. It was surmised that Marines may have been buying drugs from civilians at the shopping center.

As a result of this information, two Marine Corps personnel were authorized to go to the shopping center, with the knowledge of and in cooperation with the County police officials, to determine whether there was any Marine involvement in drug traffic in that vicinity. They were not assigned to assist local law enforcement personnel but rather were there to ascertain whether any Marines or other military personnel were engaged in drug traffic. Several AWOL Marines were detected in the course of their actions and later apprehended but none was established as engaged in the drug traffic under investigation by local police. On September 10, 1971, local authorities arrested approximately 30 persons, 29 of whom were charged and later convicted of drug possession, sale, or related transactions. As it developed, none of these thirty was a military member, and it was therefore concluded that further Marine Corps participation would be unfruitful. At the subsequent trial in Circuit Court, Prince William County, Virginia, held in January 1972, Marine Corps personnel appeared pursuant to subpoena and testified to their knowledge of the defendants' participation in drug traffic.

The Marine Corps as well as all other military units maintain close liaison with local law enforcement agencies in the vicinity of military bases. For the policies governing the employment of military resources in the event of civil disturbances see DoD Directive 3025.12, August 29, 1971, attached.

Also attached hereto are copies of regulations for each of the Services relating to conflict of interest and outside employment of military personnel. Your particular attention is invited to Marine Corps Order 5330.3, dated December 21, 1970, attached, which contains prohibitions on civilian employment of active duty Marine Corps personnel. Paragraph 4.d. of this directive refers specifically to the prohibition against engaging in civilian employment as law enforcement officers for a public police force.

We trust this information help to set the record straight concerning the specific complaint you have in mind.

Sincerely,

J. FRED BUZHARDT.

SENATE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS.
Washington, D.C., July 30, 1973.

Hon. JAMES SCHLESINGER,
Secretary, Department of Defense,

DEAR MR. SECRETARY: As I indicated in my letter of July 3, 1973, the Constitutional Rights Subcommittee intends to continue its inquiry into surveillance by the military and other government agencies of political activities of Americans. You were kind enough in your reply of July 14, 1973, to offer your cooperation and to designate Mr. Martin Hoffman as liaison with the Subcommittee.

I am submitting with this letter a set of inquiries on this subject. Mr. Baskir of the Subcommittee will be in touch with Mr. Hoffman in case any problems arise with respect to this inquiry.

I want to thank you for your cooperation in the Subcommittee's endeavor.

With kindest wishes,

Sincerely yours,

SAM J. ERVIN, Jr.,
Chairman.

Enclosure.

I. CONTINUING INTELLIGENCE ACTIVITIES

A. On March 1, 1971, the Department of Defense issued DoD Directive 5200.27 governing the collection and retention of information on the political activities of Americans unaffiliated with the Armed Forces. The Department has forwarded to the Subcommittee a copy of this directive as well as USAINTC Reg. 381–100, dated 2 January 1970. The USAINTC Reg. included Chapter 6 which is classified "Secret" and published under separate cover. The Subcommittee has also received Changes 1, 2 and 3 to the USAINTC Reg. and no changes to DoD Directive 5200.27.

(1) Are the DoD Directive and USAINTC Regulation still in effect?

(2) Since the dates of their issuance (March 1, 1971, and January 2, 1970), have there been further formal changes to the DoD Directive or the USAINTC Reg. which are not in the Subcommittee's possession?

(3) Since these dates, have there been any other directives or orders—classified or not—which amend, alter, modify, interpret or make exception to the provisions of the DoD Directive or the USAINTC Regulation in any respect?

(4) Have any one-time or temporary exceptions or modifications been granted to the provisions of the DoD Directive, or the USAINTC Regulation under the provisions of para. 1–23(c) or otherwise?

(5) Does the Directive apply to operations of the NSA, DIA and all other agencies under the jurisdiction of the Department of Defense? If not, please submit copies of the analogous regulations or orders which govern the collection of intelligence by these agencies.

(6) Prior to March 1, 1971, was any information collected by the Department of the Army about civilians unaffiliated with the Department of Defense ever transmitted to NSA?

(7) Subsequent to that date, was any such information ever transmitted to NSA? Does NSA now possess any such information?

(8) If the answer to (6) or (7) is yes, please describe the kind, amount and nature of the information, and the circumstances of its transfer.

B. Section I of DoD Directive 5200.27 states that the directive applies to the collection of information regarding all persons and organizations not affiliated with the Department of Defense. Section II of the Directive provides, however, that it is applicable only to the use of military forces located within the 50 states and the territories and possessions of the United States. Para. 1–13 of USAINTC Regulation contains these same provisions.

(1) Does the DoD Directive prohibit the collection of information on American civilians living abroad by military forces stationed outside the 50 states or the territories and possessions of the United States?

(2) If not, are there other directives, regulations, or orders which do prohibit such information-gathering?

(3) If there are not such regulations, are there other directives, regulations, or orders which limit or regulate such information-gathering?

C. Change 1 to USAINTC Reg. 381–100, dated 1 June 1971, added Section IV of Chapter 1, entitled "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," and Section X of Chapter 6, entitled "Counterintelligence Information Reporting." Para. 1–13(a) of USAINTC Reg. 381–100 states that it implements a Department of Army letter directing the implementation of DoD Directive 5200.27. It does not purport to supersede the existing provisions of USAINTC 381–100 except where they are in conflict with the policies stated.

(1) Are the procedures authorized by Chapter 6 of USAINTC Reg. 381–100 still valid as long as the intelligence collecting does not exceed the limits

established by DoD Directive 5200.27 and Chapter 1, Section IV of USAINTC Reg. 381–100?

(2) If so, how many covert special operations plans have been proposed under the provisions of para. 6–14 since 1 June 1971, the date of Change 1 to USAINTC Reg. 381–100? How many received approval by USAINTC? By Department of the Army? By the Chairman of the Defense Investigative Review Council (DIRC)? Please specify the nature and circumstances of each plan which received approval.

(3) Para. 6–16(b)(2) alludes to the fact that some of the covert operations plans may entail "clandestine" (defined as "illegal") activities. Did any cover special operations plans proposed under para. 6–14 since 1 June 1971 entail "clandestine" activities? How many such plans were approved by USAINTC? By Department of the Army? By DIRC? Pleaase specify the nature and circumstances of each plan which received approval.

(4) Section IV, Chapter 6 of USAINTC Reg. 381–100 authorizes Aggressive Counterintelligence Programs (ACIP). to be initiated on the request of local commanders. How many such requests for ACIP's were received by USAINTC after 1 June 1971? How many were approved by USAINTC? Is approval for such plans required by any higher level of authority? Please specify the nature and circumstances of each request which received approval of USAINTC or any higher authority.

(5) Section VI, Chapter 6 of USAINTC Reg. 381–100 authorizes covert Offensive Counterintelligence Operations (OFCO), to be initiated by MI group commanders. How many such operations were proposed by MI group commanders after 1 June 1971? How many were approved by USAINTC? Is approval for such plans required by any higher level of authority? Is higher authority required to be informed either before or after initiation? Please specify the nature and circumstances of each plan which received approval of USAINTC or any higher authority.

(6) Section VII, Chapter 6 of USAINTC Reg. 381–100 provides, *inter alia*, for the selection and development of "confidential sources" among Department of Army personnel. Para. 6–39(C)(e) further alludes that some of these may be called upon to perform "clandestine" (defined as "illegal") acts. How many such "confidential sources" are now maintained by USAINTC? How many of these are classified as "clandestine" sources?

(7) Is the Interagency Source Registry, provided for in Section VIII, Chapter 6, USAINTC Reg. 381–100, still in existence? If not, on what date did it cease operation?

(8) Para. 6–62(d) of USAINTC Reg. 381–100 authorizes off-post monitoring of "subversive activity" under certain circumstances if the approval of the Department of Army has been obtained. How many requests to conduct such monitoring have been made to USAINTC since 1 June 1971? How many were approved by USAINTC? By Department of Army? Please specify the requesting unit, the approving authority, the activity monitored and the results of such operations.

(9) Section XII, Chapter 6 of USAINTC Reg. 381–100 provides for use of video tape and equipment to conduct intelligence operations. How many operations plans calling for use of such equipment were submitted to USAINTC since 1 June 1971? How many were approved by USAINTC? By Department of Army? Again, please specify the requesting unit, the approving authority, and how such equipment was employed.

D. We have noted that neither the DoD Directive nor the USAINTC Regulation applies specifically to military units stationed outside the 50 states or territories and possessions of the United States. The Subcommittee is interested in knowing whether USAINTC collects information on American citizens living outside the United States and its territories and possessions who are not affiliated with the Department of Defense. Specifically:

(1) If there are such operations, are they then governed by the limitations of DoD Regulation 5200.27 or USAINTC Reg. 381–100?

(2) If they are so governed, please furnish the Subcommittee with the number of special operations plans authorized under the provisions of para. 6–14 of USAINTC Reg. 381–100; the number of these plans which involved "clandestine" activities under para. 6–16(b)(2); the number of ACIP's authorized

under Section IV, Chapter 6; the number of OFCO's authorized under Section VI, Chapter 6; and, finally, the number of instances where off-post monitoring under para. 6–62(d) have been authorized in overseas locations. (The Subcommittee realizes that these figures may be included in the totals furnished in the previous answers.)

(3) If intelligence-gathering activities are being carried out by USAINTC against American civilians living abroad, and these are not governed by DoD Directive 5200.27 and USAINTC Reg. 381–100, under what regulation are they being carried out? If such an alternative regulation exists, the Subcommittee asks that it be furnished a copy.

(4) If intelligence-gathering activities are being carried out by USAINTC against American civilians living abroad, which, if any, of the following techniques have been employed to collect such intelligence:

a. Wiretapping;
b. Electronic bugging;
c. Covert infiltration;
d. Opening, copying or tampering with mail;
e. Burglaries or other clandestine means;
f. Informants;
g. Overt observation;
h. Videotape equipment;
i. Liaison with foreign governments; and
j. Liaison with U.S. agencies.

(5) Has any intelligence operation been conducted by USAINTC involving the activities of one Thomas Schwaetzer or one Max Watts, residing in Heidelberg, West Germany? If so, has this operation entailed a wiretap by USAINTC on telephone number 06223–3316? To what intelligence operation does the USI case number A–0088 refer?

(6) Does USAINTC maintain a dossier on Lawyer's Military Defense Committee attorney Howard DeNike, residing in Heidelberg, West Germany? If so, what is the authority for the maintenance of such dossier?

E. The Subcommittee is interested in learning the extent of surveillance activity over civilians which is carried out by all subordinate units of the Department of Defense, and not simply those of the Army or the USAINTC. What other agencies or units under departmental jurisdiction are now authorized to collect intelligence on civilians and civilian organizations—either within or without the 50 states and the territories and possessions of the United States? What directives or regulations govern such activities? Please furnish the Subcommittee with copies of such regulations. In particular, the Subcommittee has not received copies of regulations issued by the Navy or Air Force which correspond to USAINTC Reg. 381–100. Accordingly, we request copies of those regulations issued by the other services since March 1, 1971, which govern their intelligence activities both within and without the continental United States.

II. MILITARY PARTICIPATION IN INTERAGENCY INTELLIGENCE ACTIVITIES

A. In the course of the Subcommittee's investigation into Army surveillance beginning in 1970, it was ascertained that military representatives held seats as late as 1970 on the two standing committees of the Justice Department's Interdivisional Intelligence Unit, namely, the Intelligence Evaluation Committee and the Law Enforcement Policy Committee.

DoD Directive 5200.27 did not specifically preclude the military's participation in interagency intelligence committees, such as the Justice Department's IDIU. In fact, Section IV(c) of the directive acknowledges that the "Attorney General is the chief civilian officer in charge of coordinating all federal government activities relating to civil disturbances," and that information may be obtained from the Justice Department which relates to the military's civil disturbance function, providing the receipt of such information has been authorized by the Secretary of Defense or his designee. USAINTC Reg. 381–100 also clearly contemplates close liaison with the Justice Department. Participation in interagency intelligence committees or other activities seems to have been implicitly allowed for.

(1) To what extent, if any, did Department of Defense personnel continue to participate in any interagency intelligence evaluation committees after the promulgation of DoD Dirctive 5200.27 on 1 March 1971? The Subcommittee is interested in participation in any sort of domestic intelligence committee, whether formal or *ad hoc*, or whether created under the auspices of the IDIU, the Internal Security Division or any other Division of the Justice Department, the White House or any other agency of the Executive Branch.

(2) If, indeed, there was such participation by Defense Department personnel, please provide the names of the intelligence committees, the names and offices of those participating, and the inclusive dates of such participation.

(3) Again, if there was such participation, please describe the purpose and authority of each committee. If there are written statements to this effect, please include a copy of them. The Subcommittee also requests that it be furnished copies of any reports which these committees may have produced.

(4) Please indicate if participation is continuing.

III. OPERATION OF THE DEFENSE INVESTIGATIVE REVIEW COUNCIL (DIRC)

A. DoD Directive 5200.27 established the Defense Investigative Review Council (DIRC) to monitor the operation of the Defense Department's intelligence activities in order to insure that the regulation was being complied with. The Subcommittee subsequently did receive copies of inspection schedules which the DIRC had conducted or intended to conduct.

(1) The Subcommittee has never received any of the inspection reports. We now request that copies of all these reports be made available to us. We are, of course, particularly interested in any such reports which include evidence of (a) continued domestic surveillance of civilians by military agents in violation of the DoD Directive, (b) the maintenance of domestic intelligence information collected after the date of the regulation, or (c) the maintenance of domestic intelligence information which had not been destroyed as required by the regulation. Any record of corrective action taken by the DIRC or the unit involved should also be included.

(2) Does the DIRC review the intelligence activities of the Defense Intelligence Service? If so, what has been the Council's findings in regard to this agency's compliance with the DoD regulation?

(3) Does the DIRC review the intelligence activities of the National Security Agency? If so, what have been the Council's findings with respect to compliance on the part of this agency?

(4) Does the DIRC review intelligence activities of Defense Department units outside the continental United States? If so, what have been the DIRC's findings with respect to compliance in this area?

(5) Please submit copies of all DIRC reports with respect to compliance by DIS, NSA, and intelligence activities by units of the Department of Defense.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE.
Washington, D.C. November 8, 1973.

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Special Assistant to the Secretary of Defense has reviewed and asked me to send to you the answers to the comprehensive list of questions contained in your letter of July 30, 1973.

In responding to your inquiries, we have attempted to avoid limited and technical answers but rather to address the underlying issues which we believe concern you. Additionally, it may prove useful to have staff discussions of the efforts that have been made to restructure and limit the investigative activities of the Department of Defense.

It is our hope that the attached information and the ensuing dialogue will respond to your concerns.

Sincerely,

D. O. COOKE,
Deputy Assistant Secretary of Defense.

Attachments.

Answers to Inquiries of Senate Subcommittee on Constitutional Rights, Submitted to the Secretary of Defense on July 30, 1973

SECTION I.A

Question: On March 1, 1971, the Department of Defense issued DoD Directive 5200.27 governing the collection and retention of information on the political activities of Americans unaffiliated with the Armed Forces. The Department has forwarded to the Subcommittee a copy of this directive as well as USAINTC Reg. 381–100, dated 2 January 1970. The USAINTC Reg. included Chapter 6 which is classified "SECRET" and published under separate cover. The Subcommittee has also received Changes 1, 2 and 3 to the USAINTC Reg. and no changes to DoD Directive 5200.27.

Comment: USAINTC Reg. 381–100 dated 2 January 1970, is not and does not purport to be the Army's implementation of DoD Directive 5200.27. The Army's primary implementation of the latter mentioned DoD Directive is the enclosed Department of the Army letter dated June 1, 1971. As Section 3 of the Army's 1 June 1971 letter states, "This letter is the *sole and exclusive authority* for collecting, reporting, processing and storing investigative and related counterintelligence information on civilians not affiliated with the Department of Defense." Also, it states: "*No other Department of the Army or subordinate command regulations,* policy letter, circular or other form of authority, *classified or unclassified, may be used to justify activities forbidden by this letter.*" (Attachment 1)

(Attachment 1 is printed in Hearings before the Subcommittee on Constitutional Rights "Federal Data Banks, Computers, and the Bill of Rights," 1971, at p. 1239.)

SECTION I.A. (1)

Question: Are the DoD Directive (5200.27) and USAINTC Reg. still in effect?

Answer: DoD Dir. 5200.27, dated March 1, 1971, is still in effect. USAINTC Reg. 381–100 with changes 1, 2 and 3, is also in effect.

SECTION I.A. (2)

Question: Since the dates of their issuance (March 1, 1971, and January 2, 1970), have there been further formal changes to the DoD Directive or the USAINTC Regulation, which are not in the Subcommittee's possession?

Answer: DoD Directive 5200.27 has not been formally changed. USAINTC Regulation 380–211 issued on January 2, 1970, has been changed by Change 1, dated 1 June 1971, Change 2, dated 8 Nov 1971, and Change 3, dated 14 Feb 1972.

SECTION I.A. (3)

Question: Since these dates, have there been any other directives or orders—classified or not—which amend, alter, modify, interpret or make exception to the provisions of the DoD Directive or the USAINTC Regulations in any respect?

Answer: Yes. DIRC supplemental guidance has resulted in modifications and interpretations which have been incorporated in the unclassified Army letter of 1 June 1971, attachment 1. In addition, ACSI DA subsequently has issued interpretations of the 1 June 1971 letter as shown in attachments 2, 3 and 4.

By letter of August 3, 1971, Mr. J. Fred Buzhardt, General Counsel of the DoD, furnished Chairman Ervin the essence of six actions of supplemental guidance promulgated by the DIRC. These concerned the following subjects:

Detailed Guidance on Retention of Investigative Records
DIRC Inspection Techniques
A Review of Counterintelligence Publications
Investigative and Related Counterintelligence Terminology
Standards for Recruitment, Training and Accreditation of DoD Investigative Personnel
Special Operations Requests

In late 1971, the DIRC examined the feasibility of extending DIRC investigative policies and prohibitions with respect to U.S. citizens overseas, paying particular attention to local customs, laws, status of forces agreements, and other legal considerations affecting investigative activities in foreign countries. The DIRC agreed unanimously not to enlarge the geographic boundaries set forth in DoD Directive 5200.27. They noted the continuing effort to separate the idea of investigations of our own personnel from intelligence operations and observed that overseas, much of our investigative activity intertwines with and is inseparable from foreign intelligence missions. To extend investigative policies abroad might tend to blur the distinctions drawn by DIRC between intelligence gathering and investigations of personnel. Further, differences in relationships with foreign governments, treaties, status of force agreements, and some unstated or unwritten accords, all serve to make application of DIRC policies abroad enormously complicated.

Subsequently the DIRC has addressed the issue of *Applicability of DIRC Guidelines to Criminal Investigative Activities*—The main objectives were to examine the advisability of extending DIRC guidelines to criminal investigative activities, the adequacy of present restrictions on military criminal investigators, and the practical considerations attendant upon any such expansion of DIRC jurisdiction. The DIRC decided that DIRC constraints do apply to criminal investigative activities where such activities involve alleged subversion, espionage, sabotage or other security related matters.

The criminal investigative activities of the military departments in the civilian community were determined to be closely regulated by statute, Service regulations and the Delimitations Agreement between the Federal Bureau of Investigation and DoD agencies. Essentially, the jurisdiction of military law enforcement investigators within the United States is limited to persons subject to military law, or otherwise affiliated with the Department of Defense, as defined by DIRC. (The DIRC definition of "affiliation" in incorporated in implementing directives previously furnished Chairman Ervin.)

Also, the DIRC has held that except in cases where concurrent military investigative responsibility exists, DoD command and supervisory officials shall not sanction or lend affirmative support for the use of DoD personnel as prospective sources or informants for civilian law enforcement agencies.

When the Defense Investigative Service was created in early 1972, it was immediately placed under the civilian overview of the DIRC, and since becoming operational in October 1972, has been included in inspections by DIRC principals.

The DIRC examined the issue of bilateral counterespionage operations, and granted blanket authority for the participation of military investigative agencies in the conduct of operations against foreign intelligence agencies in the U.S., in those cases where the operation is controlled by a non-DoD Federal agency. If, however, in the exercise of this authority, the penetration or the covert or otherwise deceptive surveillance of a domestic civilian organization by DoD personnel is contemplated, specific DIRC approval for the special operation must be obtained under DIRC rules.

The issue of applying the DIRC restrictions to National Guard units was resolved by the DIRC with the holding that only when federalized is the Guard bound by DoD Directives, at which time all the prohibitions and restrictions of DoD Directive 5200.27 apply to personnel of a federalized unit.

The DIRC has also held that, with the exception of electronic monitoring, the prohibitions of DoD Directive 5200.27 do not apply to civilians on a military base.

The DIRC has also amended DIRC file retention criteria by adding the following provisions:

> "File holdings of investigative agencies resulting from any activities involving an inquiry from members of the public to the DoD for information relating to DoD functions or units, unit insignia, signatures or photos of senior commanders, etc., may be retained subject to annual review for pertinency."
>
> "File holdings of investigative agencies resulting from any activities involving an unsubstantiated report to DoD components from members of the public alleging imminent invasions, communist plots and similar events of a delusional nature, and assorted "crank" files, may be retained in excess of one year but subject to annual review for their pertinency."

Also, as a result of Chairman Ervin's recent request to the Secretary of Defense not to destroy certain "domestic intelligence files," a directive to withhold all destruction of files was issued as shown in Attachment 5.

SECTION I.A. (4)

Question: Have any one-time or temporary exceptions or modifications been granted to the provisions of the DoD Directive, or the USAINTC Regulation under the provisions of paragraph 1–23(c) or otherwise?

Answer: No. However, in accordance with the provisions of the DoD Directive which provides for the Secretary of Defense or his designee to authorize an exception to certain prohibited activities, the Chairman of the DIRC has, since March 1971, authorized a small number of special operations under Section V. E. of DoD Directive 5200.27. No other exceptions to prohibited activities have been made since promulgation of this directive. None of the exceptions granted under Section V.E. of the DoD Directive has involved a request initiated under USAINTC Regulation 381–100.

SECTION I.A. (5)

Question: Does the Directive apply to operations of the NSA, DIA and all other agencies under the jurisdiction of the DoD? If not, please submit copies of the analogous regulations or orders which govern the collection of intelligence by these agencies?

Answer: The DoD Directive applies to the NSA and the DIA and other Defense agencies within the geographical areas covered by the DoD Directive. It does not apply to "the acquisition of foreign intelligence information or to activities involved in ensuring communications security," and hence does not apply to the foreign intelligence gathering activities of both the DIA and NSA. It does apply to their personnel investigative activities within the 50 states, the District of Columbia, Puerto Rico and U.S. territories and possessions. Copies of the relevant directives are enclosed as Attachments 6 (DIA) and 7 (NSA). (Attachment 7 omitted)

SECTION I.A. (6)

Question: Prior to March 1, 1971, was any information collected by the DA about civilians unaffiliated with the Department of Defense ever transmitted to NSA?

Answer: Yes. Summaries of Information and other Civil Disturbance documents, including the so-called "compendium," were furnished to the National Security Agency and other DoD components by the Department of the Army during the period 1968–1969. The NSA copies of the "compendium" ("Civil Disturbance and Dissidence," Vols I and II) have all been destroyed. The NSA advises that they have no such civil disturbance information from the Department of the Army or any other source in their possession. According to limited records still available from that period, it seems that whatever information was received was disposed of by the National Security Agency because it was of no interest to that Agency. In any event, we are certain (as we previously advised Chairman Ervin on January 23, 1973) that the National Security Agency was not furnished and is not maintaining copies of Army files and data banks relating to domestic surveillance of the late 1960's.

SECTION I.A. (7)

Question: Subsequent to that date, was any such information ever transmitted to NSA? Does NSA now possess any such information?

Answer: No to both questions.

SECTION I.A. (8)

Question: If the answer to (6) and (7) is yes, please describe the kind, amount and nature of the information, and the circumstances of its transfer.

Answer: See answers to (6) and (7) above.

SECTION I.B.

Question: Section I of DoD Directive 5200.27 states that the directive applies to the collection of information regarding all persons and organizations not affiliated with the Department of Defense. Section II of the Directive provides, however, that it is applicable only to the use of military forces located within the 50 states and the territories and possessions of the United States. Paragraph 1–13 of USAINTC Regulation contains these same provisions.

(1) Does the DoD Directive prohibit the collection of information on American civilians living abroad by military forces stationed outside the 50 states or the territories and possessions of the United States?

Answer: No.

SECTION I.B. (2)

Question: If not, are there other directives, regulations or orders which do *prohibit* such information-gathering? (Underlining added)

Answer: No. However, it is important to point out that any investigation done by military investigators anywhere must be *authorized.* Prohibitions alone do not set the stage for what an investigator can or cannot do. In order for a military investigator to undertake an investigation, there must be some authorized and legitimate mission-related military purpose in doing so. Moreover, in drafting DoD Directive 5200.27, it was only thought necessary to prohibit certain activities within the US, its territories and possessions, because it was in these geographical areas where the military previously had been tasked to gather civil disturbance information circa 1968–1969, which the Directive issued on March 1, 1971, was designed to prohibit, except in carefully delimited circumstances.

SECTION I.B. (3)

Question: If there are not such regulations, are there other directives, regulations or orders which limit or regulate such information gathering?

Answer: Yes. For example, Status of Forces Agreements (SOFA) in some countries severely delimit or prohibit our investigative activities within the civilian community. This varies from country to country. Our internal regulations of overseas commands reflect these SOFA's, and other written or unwritten accords. As a different kind of example, overseas command within the Army require approval for counterintelligence wiretaps to be given only at theatre (USAREUR or USARPAC) level. Thus, in Europe the authority who approves all requests for such wiretaps is the Deputy Chief of Staff, Intelligence, Headquarters USAREUR, acting for the CINC, USAREUR. In West Germany, the actual wiretap is performed by Federal Republic authorities in accordance with the provisions of German law, but only after initial approval for the wiretap is given by the DCSI, USAREUR. In Army criminal investigations, world-wide, initial approval for all wiretaps must be obtained from the Commander, CID Command in Washington, D.C.

SECTION I.C.

Question: Change 1 to USAINTC Reg. 381–100, dated 1 June 1971, added Section IV of Chapter 1, entitled "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," and Section X of Chapter 6, entitled "Counterintelligence Information Reporting." Para. 1–13(a) of USAINTC Reg. 381–100 states that it implements a Department of Army letter directing the implementation of DoD Directive 5200.27. It does not purport to supersede the existing provisions of USAINTC 381–100 except where they are in conflict with the policies stated.

(1) Are the procedures authorized by Chapter 6 of USAINTC Regulation 381–100 still valid as long as the intelligence collecting does not exceed the limits established by DoD Directive 5200.27 and Chapter 1, Section IV of USAINTC Regulation 381–100?

Answer: Yes, procedures authorized by Chapter 6 of USAINTC Regulation 381–100 are still valid under the conditions set forth in this question.

SECTION I.C. (2)

Question: If so, how many covert special operations plans have been proposed under the provisions of para 6–14 since 1 June 1971, the date of Change 1 to USAINTC Regulation 381–100? How many received approval by USAINTC? By Department of the Army? By the Chairman of the Defense Investigative Review Council (DIRC)? Please specify the nature and circumstances of each plan which received approval.

Answer: Since 1 June 1971, one covert special operation has been proposed to USAINTC by a subordinate element and is currently under consideration. No plans for such operations have been approved by HQ, USAINTC nor have any such plans been submitted for approval to Department of the Army (DA).

SECTION I.C. (3)

Question: Para 6–16(b)(2) alludes to the fact that some of the covert operations plans may entail "clandestine" (defined as "illegal") activities. Did any covert special operations plans proposed under para 6–14 since 1 June 1971 entail "clandestine" activities? How many such plans were approved by USAINTC? By Department of the Army? By DIRC? Please specify the nature and circumstances of each plan which received approval.

Answer: The proposed covert special operation mentioned in the response to Question (2) above, does not entail "clandestine" activities, nor does it entail "illegal" activities.

SECTION I.C. (4)

Question: Section IV, Chapter 6 of USAINTC Regulation 381–100 authorizes Aggressive Counterintelligence Programs (ACIP) to be initiated on the request of local commanders. How many such requests for ACIPs were received by USAINTC after 1 June 1971? How many were approved by USAINTC? Is approval for such plans required by any higher level of authority? Please specify the nature and circumstances of each request which received approval of USAINTC or any higher authority?

Answer: USAINTC has received a total of seven requests for ACIPs since 1 June 1971. Of these, two have been approved by USAINTC and by DA. DA approval of all ACIPs is required. Each of the ACIPs which has been approved was requested because the installation commander felt that a threat to the security of his installation existed or because he felt that the sensitivity of the installation's activities dictated expanded security protection. (ACIP operations are on-post operations designed to give indications of internal security problems.) There are 9 other ACIPs, approved prior to 1 June 1971, which are still on-going.

SECTION I.C. (5)

Question: Section VI, Chapter 6 of USAINTC Regulation 381–100 authorizes covert Offensive Counterintelligence Operations (OFCO), to be initiated by MI group commanders. How many such operations were proposed by MI group commanders after 1 June 1971? How many were approved by USAINTC? Is higher authority required to be informed either before or after initiation? Please specify the nature and circumstances of each plan which received approval of USAINTC or any higher authority.

Answer: Countersubversion Offensive Counterintelligence Operations can be proposed but not initiated by MI Group commanders. As indicated in response to Section I.C.(2) above, one such covert operation has been proposed since 1 June 1971. No such operations have been approved by USAINTC. Approval for all such plans must be given by the Under Secretary of the Army and by the Chairman of the DIRC before initiation of an OFCO.

SECTION I.C. (6)

Question: Section VII, Chapter 6 of USAINTC Regulation 381–100 provides inter alia, for the selection and development of "confidential sources" among Department of Army personnel. Para 6–39(C)(e) further alludes that some of these may be called upon to perform "clandestine" (defined as "illegal") acts. How many such "confidential sources" are now maintained by USAINTC? How many of these are classified as "clandestine" sources?

Answer: USAINTC currently maintains 29 confidential sources who operate in support of ACIPs. None of these is classified as "clandestine," and none is involved in illegal activities.

SECTION I.C. (7)

Question: Is the Interagency Source Registry, provided for in Section VIII, Chapter 6, USAINTC Regulation 381–100, still in existence? If not, on what date did it cease operation?

Answer: The Interagency Source Registry is still in existence.

SECTION I.C. (8)

Question: Para 6–62(d) of USAINTC Regulation 381–100 authorizes off-post monitoring of "subversive activity" under certain circumstances if the approval of the Department of Army has been obtained. How many requests to conduct such monitoring have been made to USAINTC since 1 June 1971? How many were approved by USAINTC? By Department of the Army? Please specify the requesting unit, the approving authority, the activity monitored and the results of such operations.

Answer: No requests for off-post monitoring have been made to USAINTC since 1 June 1971 nor have any been approved by HQ USAINTC or by the Department of the Army.

SECTION I.C. (9)

Question: Section XII, Chapter 6 of USAINTC Regulation 381–100 provides for use of video tape and equipment to conduct intelligence operations. How many operations plans calling for use of such equipment were submitted to USAINTC since 1 June 1971? How many were approved by USAINTC. By Department of the Army? Again, please specify the requesting unit, the approving authority, and how such equipment was employed.

Answer: No operations plans calling for the use of video tape and equipment have been submitted to USAINTC since 1 June 1971. None has been approved by HQ USAINTC nor by DA.

SECTION I.D.

Question: We have noted that neither the DoD Directive nor the USAINTC Regulation applies specifically to military units stationed outside the 50 states or territories and possessions of the United States. The Subcommittee is interested in knowing whether USAINTC collects information on American citizens living outside the United States and its territories and possessions who are not affiliated with the Department of Defense. Specifically:

(1) If there are such operations, are they then governed by the limitations of DoD Regulation 5200.27 or USAINTC Regulation 381–100?

Answer: No. Normally, USAINTC does not collect information on American citizens living outside the United States and its territories and possessions. USAINTC's geographic area of jurisdiction and responsibility for providing counterintelligence investigative support to US Army elements consists of CONUS (the 48 contiguous states, Alaska, Puerto Rico and the Virgin Islands). (Note that Hawaii is not included in USAINTC's area of jurisdiction). In the extremely rare cases in which USAINTC might become involved in such activities, the activities will not be governed by DoD Directive 5200.27 or USAINTC Regulation 381–100. (See response to question (3) below). Overseas major Army commands possess and control organic counterintelligence elements.

SECTION I.D. (2)

Question: If they are so governed, please furnish the Subcommittee with the number of special operations plans authorized under the provisions of para 6–14 of USAINTC Regulation 381–100; the number of these plans which involved "clandestine" activities under para 6–16(b)(2); the number of ACIPs authorized under Section IV, Chapter 6; the number of OFCO's authorized under Section VI, Chapter 6; and finally, the number of instances where off-post monitoring under para 6–62(d) have been authorized in overseas locations. (The Subcommitee realizes that these figures may be included in the totals furnished in the previous answers.

Answer: See answer to Question (1) above.

SECTION I.D. (3)

Question: If intelligence-gathering activities are being carried out by USAINTC against American civilians living abroad, and these are not governed by DoD Directive 5200.27, and USAINTC Regulation 381–100, under what regulation are they being carried out? If such an alternative regulation exists, the Subcommittee asks that it be furnished a copy.

Answer: Counterintelligence activities carried out in overseas areas are governed by Army Regulation 381–130, Counterintelligence Investigations Supervision and Control, and Army Regulation 381–47, US Army Offensive Counterintelligence Operations. Copies of these regulations were previously furnished the Subcommittee. As indicated in paragraph 6b(3) of AR 381–47, USAINTC may assume control of an overseas counterintelligence investigation/operation, but only with the specific approval of HQ, Department of the Army. Currently, USAINTC is not controlling any such activities in oversea Army commands. The US Army does not carry out information gathering (investigative) activities against American civilians anywhere in the world unless such individuals are involved in activities which threaten the accomplishment of the Army's mission and functions.

SECTION I.D. (4)

Question: If intelligence-gathering activities are being carried out by USAINTC against American civilians living abroad, which, if any, of the following techniques have been employed to collect such intelligence?

a. Wiretapping
b. Electronic bugging
c. Covert infiltration
d. Opening, copying or tampering with mail
e. Burglaries or other clandestine means
f. Informants
g. Overt observation
h. Videotape equipment
i. Liaison with foreign governments
j. Liaison with US agencies

Answer: As previously stated, USAINTC is not conducting intelligence gathering activities against American civilians living abroad. However, as indicated in response to question (3) above, U.S. Army elements overseas may from time to time investigate U.S. civilians who pose a threat to Army personnel, property or functions, in which event differing investigative techniques may be employed. Liaison with foreign governments and other U.S. agencies, as well as overt observation, would be more or less routine. The extraordinary techniques of wiretaps, covert infiltration, informants, opening mail, etc., might be used depending upon the individual circumstances of the case, the nature and seriousness of the threat, operational exigencies and the domestic law of the country involved.

SECTION I.D. (5)

Question: Has any intelligence operation been conducted by USAINTC involving the activities of one Thomas Schwaetzer or one Max Watts, residing in Heidelberg, West Germany? If so, has this operation entailed a wiretap by USAINTC on telephone number 06223–3316? To what intelligence operation does the USI case number A–0088 refer?

Answer: USAINTC has conducted no intelligence operations involving one Thomas Schwaetzer or one Max Watts. The 66th MI Group, HQ, US Army Europe (USAREUR), however, conducted an investigation of Thomas (Tomi) Schwaetzer (alias: Max Watts). Further answer to this question is included in a classified attachment 8 hereto.

SECTION I.D. (6)

Question: Does USAINTC maintain a dossier on Lawyer's Military Defense Committee attorney Howard DeNike, residing in Heidelberg, West Germany? If so, what is the authority for the maintenance of such dossier?

Answer: Neither USAINTC nor USAREUR maintains a dossier on Howard DeNike. His name does appear in USAREUR's investigative file on Thomas (Tomi) Schwaetzer.

SECTION I.E.

Question: The subcommittee is interested in learning the extent of surveillance activity over civilians which is carried out by all subordinate units of the Department of Defense, and not simply those of the Army or USAINTC. What other agencies or units under departmental jurisdiction are now authorized to collect intelligence on civilians and civilian organizations—either within or without the 50 states and the territories and possessions of the United States?

Answer: The acquisition of information on civilians and civilian organizations by all Department of Defense components is restricted to that which is essential to the accomplishment of assigned Department of Defense missions. The other Department of Defense investigative organizations which may, in strictly limited situations, acquire information relating to persons or organizations not affiliated with the Department of Defense, are the Air Force Office of Special Investigations (OSI) and the Naval Investigative Service (NIS).

Question: What directives or regulations govern such activities?

Answer: The Directives of the Air Force and the Navy which implement DoD Directive 5200.27 are as follows: Air Force Regulation 124–13, dated 23 June 1971; Department of the Navy SECNAV Instruction 3820.2A, dated 1 Nov 1971.

Question: Please furnish the Subcommittee with copies of such regulations.

Answer: Copies of these directives are attached as Attachments 9 and 10. (Attachment 9 is printed at page 1256 of the 1971 hearings. Attachment 10 is printed at page 1248.)

Question: In particular the Subcommittee has not received copies of the regulations issued by the Navy or Air Force which correspond to USAINTC Regulation 381–100. Accordingly, we request copies of these regulations issued by the other Services since March 1, 1971, which govern their intelligence activities both within and without the continental United States.

Answer: The subcommittee has previously been furnished copies of the Navy and Air Force regulations which implement DoD Directive 5200.27. No directly parallel regulations corresponding to USAINTC Regulation 381–100 exist in the Air Force; however, the nearest comparable directives relating to investigative activities (not intelligence) within the Air Force are furnished herewith as Attachment 11. (C) (Attachment 11 omitted) The Department of the Navy does not have a current regulation corresponding to USAINTC Reg. 381–100. The NIS did have a "Counterintelligence Manual" which was promulgated in 1968, however, it had become obsolete and was cancelled. Provisions of that Manual dealing with civilians not affiliated with the DoD were superseded by the policies contained in SECNAV INSTR 3820.2A, dated 1 Nov 1971 (Attachment 10). Certain highly sensitive and compartmented counterespionage directives used by the military departments are not included inasmuch as they have no relation to your inquiry. Similarly, directives relating to the collection of foreign intelligence information are not relevant to the Subcommittee's inquiry, and are not furnished.

SECTION II.A (1)

Question: To what extent, if any, did Department of Defense personnel continue to participate in any interagency intelligence evaluation committees after the promulgation of DoD Directive 5200.27 on 1 March 1971? The Sub-Committee is interested in participation in any sort of domestic intelligence committee, whether formal or ad hoc, or whether created under the auspices of the IDIU, the Internal Security Division or any other Division of the

Justice Department, the White House or any other agency of the Executive Branch.

Answer: The DoD participated in the Intelligence Evaluation Committee (IEC) from approximately the middle of December 1970 until its dissolution by the Assistant Attorney General, Criminal Division, on 11 June 1973. The NSA furnished its own representation and its activities are set forth separately below. DoD participation was at the direction of the Secretary of Defense, initially under the direct control of the then Assistant Secretary of Defense (Administration), Mr. Robert Froehlke. The OSD General Counsel, Mr. J. Fred Buzhardt, assumed the direction and supervision over DoD participation when Mr. Froehlke became Secretary of the Army. In addition, the Director, DIA, then LTG D. V. Bennett, and later VADM V. P. dePoix, and the Deputy Assistant Secretary of Defense (Administration), Mr. D. O. Cooke, were kept abreast of the activities by the DoD representative.

During organizational meetings held in early January 1971 Mr. Robert C. Mardian, the Assistant Attorney General for Internal Security, requested participating agencies to furnish both analytical and clerical support to the IEC. On 1 Feb 71, Mr. Froehlke approved the attachment of a U.S. Navy ensign to the analytical staff of the committee on a temporary basis, but declined to furnish clerical support. The services of the Navy officer to the IEC staff were terminated on 10 March 1972. After this time, DoD participation consisted of attendance by the DoD representative at meetings usually held at weekly intervals in the offices of the IEC.

From the beginning, DoD representatives made it clear to the Executive Director of the Committee that the Defense Department could neither collect nor would report information to the committee other than on persons or organizations affiliated with or who pose a threat to the DoD. Furthermore, Mr. Buzhardt repeatedly emphasized that IEC requests which were not within the purveiw of DoD policies were to be forwarded to his office for disposition. In no instance did DoD contribute information to the IEC which was not within the purview of DoD policies.

DoD participation in IEC activities consisted primarily of attendance at IEC meetings to review IEC estimates and other products which had been collated from information furnished by member agencies. The primary contributor throughout the existence of the IEC was the Federal Bureau of Investigation (FBI). It is noted that the DoD representative's main concern during these meetings were those matters of legitimate interest to DoD.

The DoD representative provided information in support of the IEC collation effort, only in rare instances, in those matters which were the concern of DoD and consistent with DoD directives. DoD contribution was limited to the following IEC projects:

a. In October 1971, the IEC compiled an estimate on the "Inter-relationship of Black Power organizations in the Western Hemisphere." In response to the IEC request, DoD furnished very limited information from file holdings of the Army, Navy and Air Force on such activities affecting military installations and activities.

b. DoD furnished information on DoD plans for troop dispositions in preparation for possible major civil disturbances during the 1972 National Political Conventions and the 1973 Presidential Inauguration.

c. In late 1972, the IEC prepared estimates on the terrorist threat in the U.S. DoD furnished the number and location (but not identity) of Arab and Israeli military students studying or being trained at DoD installations in the United States.

d. In support of IEC estimates of terrorism, DoD also furnished information on terrorism threatening U.S. military personnel and installations overseas.

e. In support of the IEC's compilation of a calendar of potential terrorist activities (in support of the Cabinet Committee to Combat Terrorism) DoD furnished information on scheduled visits to the U.S. of Ministers of Defense and senior military officials from the Arab countries and Israel.

f. In the fall of 1972, the IEC was tasked by the President's Foreign Intelligence Advisory Board (PFIAB) to compile an intelligence requirements list. The DoD representative furnished DoD requirements to the list which was subsequently forwarded to ADM Anderson, the Chairman of the PFIAB.

Dissemination of the products of the IEC was limited to DoD agency principals only. One of the two copies of the IEC material received by DoD was forwarded to Mr. Buzhardt (usually through the Deputy Assistant Secretary of Defense (Administration), Mr. D. O. Cooke), the other to the Director, DIA. Both copies were normally destroyed within thirty days of receipt or sooner. The only exception to this procedure occurred when the possibility of civil disturbances arose involving the possible commitment of Federal resources or troops. This happened on three occasions: the first: the May 1971 demonstrations in Washington; the second, the National Political Conventions of 1972; lastly, the Presidential Inauguration in January 1973. On these occasions information was made available to the Under Secretary of the Army because of his responsibilities as DoD Executive Agent for civil disturbance matters.

In conclusion, it is noted that no investigations were ever conducted by the IEC, or by DoD at the request of the IEC. With the exception of the previously noted contributions DoD provided no substantive data to the IEC. The keen awareness on the limitations of DoD participation, of Messrs Buzhardt and Cooke, OSD, and ADM dePoix and General Bennett in DIA, as principal members of the Defense Investigative Review Council (DIRC), can not be overstated. Repeatedly, they directed the DoD representative to the IEC not to accept any tasking from or to provide information to the IEC which was not clearly defined as being legitimately within the DoD mission. DoD participation has been proper in all respects and has been consistent with DoD policy.

National Security Agency participation in the Intelligence Evaluation Committee

The NSA was first requested to attend an Intelligence Evaluation Committee meeting on December 16, 1970. On that date Secretary Froehlke, representing the Secretary of Defense, and Mr. Benson K. Buffham, representing the Director, NSA, attended the initial meeting at the Executive Office Building to establish the Committee. This meeting was chaired by Mr. Robert Mardian of the Department of Justice. NSA was asked to participate in order that signals intelligence information reflecting foreign involvement in civil disturbances or acts of terrorism might be provided and properly evaluated. The NSA participated in meetings of the IEC until it was discontinued on June 11, 1973. The Committee functioned as a standing group and met not oftener than twice weekly in 1971. Meetings in 1972 and 1973 were much less frequent. During this period, the NSA representative provided *no* intelligence information to the IEC.

Department of Justice Information Evaluation Center

Department of the Army, in its role as Executive Agent for the DoD in civil disturbance contingencies, provided three counterintelligence analysts to work in the Department of Justice's (DOJ) Information Evaluation Center in Miami Beach during the Democratic and Republication National Conventions in 1972. The analysts were placed in the Information Evaluation Center to assist the DOJ in processing civil disturbance information on a 24 hour basis and to act as a channel through which information furnished by civil authorities would reach Department of the Army and the Task Force Commander. The three analysts performed no operational intelligence activity whatsoever. Their participation was discontinued subsequent to the termination of the conventions. Department of the Army participated in no other interagency intelligence evaluation committees subsequent to 1 March 1971.

SECTION LL.A.(2)

Question: If, indeed, there was such participation by Defense Department personnel, please provide the names of the intelligence committees, the names and offices of those participating, and the inclusive dates of such participation.

Answer: Besides the persons identified in response to paragraph II.A.(1)

above. the following were the DoD participants (in chronological order) in the Intelligence Evaluation Committee (IEC).

John W. Downie, Colonel, U.S. Army	DoD representative from the inception of the IEC until approximately Aug 71. (Col Downie has since retired)
Francis H. Dillon, Jr., Colonel, U.S. Army (as Asst. Dep. Dir. for Counterintelligence and Security (DIA).	Charged with staff responsibility of IEC matters by Gen. Bennett 28 Dec 70 until 30 Apr 71.
William L. Vaught, Ensign, U.S. Navy	Member of the analytical staff of the IEC (Ens Vaught returned to civilian life in March 1972) 8 Feb 71 until 10 Mar 72
Werner E. Michel, Colonel, U.S. Army, Assistant Deputy Director for Counterintelligence and Security (DIA)	DoD member Jul 71 until 11 Jun 73
James E. Stilwell, Deputy Assistant Dep. Dir. for Counterintelligence and Security, (DIA)	Alternate DoD Member (Mr. Stilwell retired on 30 Jun 73)

The NSA representative on the IEC was Mr. Benson K. Buffham designated as the "NSA Representative, Department of Defense," assisted by Mr. Raymond J. Gengler of the NSA Office of Production.

The Department of the Army representatives detailed to assist the Attorney General during the 1972 Democratic and Republican conventions in the DOJ Information Evaluation Center were: Mr. Elihu Braunstein, Mr. John Blotzer, and Mr. Andrew Havre. The dates of participation were 15–25 July 1972 and 15–25 Aug 1972.

SECTION II.A.(3)

Question: Again, if there was such participation, please describe the purpose and authority of each committee. If there are written statements to this effect, please include a copy of them. The Subcommittee also requests that it be furnished copies of any reports which these committees may have produced.

Answer: The authority of the IEC was delineated in a draft charter marked SECRET-EYES ONLY, which was published and dispatched to committee members on February 10, 1971 by the Assistant Attorney General for Internal Security, Mr. Robert C. Mardian. It is not known whether this charter was ever formally promulgated. Copies of this charter and any reports produced by the IEC should be requested from the Department of Justice.

DOJ Information Evaluation Center

The sole Department of the Army participation during the 1972 conventions following a 17 May 1972 request from The Attorney General, Mr. Kleindienst, and as directed by the Under Secretary of the Army in Memorandum for the Director of Military Support, dated 30 June 1972, subject: Intelligence Support During Political Conventions at Miami Beach (Attachment 12), which reflects the Department of the Army role as Executive Agent for the DoD in civil disturbance contingencies. Information reports channeled to Department of the Army by the IEC were destroyed in accordance with criteria in Department of the Army letter, dated 1 June 1971, subject: "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense."

SECTION II.A.(4)

Question: Please indicate if participation is continuing.

Answer: As noted previously, the activities of the IEC were discontinued on 11 June 1973 by memorandum from the Assistant Attorney General, Criminal Division, Mr. Henry E. Petersen (Attachment 13). The DA participation in the DOJ Information Evaluation Center was an *ad hoc* action which terminated after the close of the two conventions in August 1972.

Other Interagency Boards Concerned with Intelligence Matters

United States Intelligence Board

In addition to Defense participation in the IEC as set forth above, the DIA and the military departments have for many years participated on the United

States Intelligence Board (USIB), and its Subcommittees. The USIB is chaired by the Director of Central Intelligence. The Defense representative on th USIB has been the Director of the Defense Intelligence Agency. The Defense participation in this group has not and is not concerned wth domestic matters, civil disturbances in the U.S. or other matters within the ambit of your investigation.

Interdepartmental Intelligence Conferences

Also, the investigative organizations of the three military departments have since 1949 participated in close liaison with the Federal Bureau of Investigation pursuant to Supplemental Agreement to the Delimitations Agreement No. 1 (Attachment 14). (Attachment 14 omitted) The regulation pertaining to those relationships, which are formalized in a group called the Interdepartmental Intelligence Conference (IIC), is DoD Directive 3115.1, "Organizational Arrangements for Internal Security, dated January 25, 1968. Attachment 15. This directive defines the duties of the IIC as "coordinating the investigation of all domestic espionage, counterespionage, sabotage, subversion and related matters affecting U.S. internal security." The composition of the IIC is also set forth in the directive. The identities of the various officials within military intelligence, AFOSI and the NIS has changed regularly over the years since its inception. In addition, field level conferences of investigative personnel have continued uninterrupted since 1949 on a monthly or bi-monthly basis. These local (field) meetings are chaired by the FBI Special Agent-in-Charge of the geographical area concerned.

The Interdeparmental Intelligence Conference (IIC) was originally chartered by the National Security Council in 1949. Since the early 1960's, the IIC has been chartered by the Attorney General. Although occasional staff level consultation has taken place since the rechartering of the IIC, the last meeting of the Conference itself was held in April 1964.

Interdepartmental Committee on Internal Security (ICIS)

The Department of Defense also participates as a member of the Interdepartmental Committee on Internal Security (ICIS), which was chartered by the National Security Council on July 18, 1949 (Attachment 16.) (Also see DoD Directive 3115.1. Attachment 15.) (Attachment 15 and 16 are omitted.)

On June 9, 1962, by National Security Action Memorandum 161, the President transferred responsibility for internal security from the National Security Council to the Attorney General. A copy of this memorandum is enclosed as Attachment 17.

Pursuant to the National Security Action Memorandum 161, the Attorney General reaffirmed the ICIS functions and responsibilities as defined in the charter, and indicated that the organization and procedure should continue unchanged, except that reports or recommendations should now be directed to the Attorney General.

In general, the charter provides that ICIS be responsible for coordinating all phases of the internal security field other than the functions assigned to the Interdepartmental Intelligence Committee (IIC).

Within the ICIS structure specialized subcommittees have been formed to deal with certain problem areas:

Subcommittee I	Defense Against Unconventional Attack
Subcommittee II	Entry and Exit Problems
Subcommittee III	Foreign Diplomatic and Official Personnel
Subcommittee IV	Protection of Classified Government Data. (This Subcommittee was discontinued in August 1973 because of a provision of Executive Order 11652 which established an Interagency Classification Review Committee to assist the National Security Council in monitoring implementation of the Order.)

Subcommittee V	Industrial Security
Subcommittee B	Countermeasures (Defense against the clandestine introduction of fissionable weapons or components).

The DoD representative to the ICIS is Mr. Joseph J. Liebling, Deputy Assistant Secretary of Defense (Security Policy), who has been serving as the Defense member since April 17, 1967. Mr. Charles M. Trammell, Jr., Director, Security Plans and Programs Directorate, Office, Deputy Assistant Secretary of Defense (Security Policy), has acted as the alternate member since July 18, 1966.

Requests for reports produced by the ICIS should be directed to the Chairman of that Committee, located in the Department of Justice Building.

SECTION III.

Operation of the Defense Investigative Review Council (DIRC)

A. DoD Directive established the DIRC to monitor the operation of the Defense Department's intelligence activities in order to insure that the regulation was being complied with. The Subcommittee subequently did receive copies of inspection schedules which the DIRC had conducted or intended to conduct.

Comment: The DIRC was founded to monitor "investigative and related counterintelligence activities" not *intelligence* activities generally. It specifically has no responsibilities with respect to the acquisition of "foreign intelligence" nor does it concern itself with activities involved in ensuring communications security.

SECTION III.A.(1)

Question: The Subcommittee has never received any of the inspection reports. We now request that copies of all these reports be made available to us. We are, of course, particularly interested in any such reports which include evidence of (a) continued domestic surveillance of civilians by military agents in violation of the DoD Directive, (b) the maintenance of domestic intelligence information collected after the date of the regulation, or (c) the maintenance of domestic intelligence information which had not been destroyed as required by the regulation. Any record of corrective action taken by the DIRC or the unit involved should also be included.

Answer: DIRC Inspection Reports are internal documents of the Department of Defense which contain findings, evaluations, and some recommendations not ordinarily appropriate for release outside the Executive Branch. However, copies of these reports are furnished to the Subcommittee in a good faith effort to rebut the misgivings expressed on page 101 of the Subcommittee's recently issued Report entitled "Military Surveillance of Civilian Politics." In furnishing these reports to the Congress, we are not authorizing the release of the reports to the general public, for which they retain their "For Official Use Only" markings.

In summary, (a) the attached inspection reports reveal *no* domestic surveillance of civilians by military agents in violation of DoD Directive; (b) they reveal no major discrepancies in the maintenance of domestic "intelligence" information acquired after the date of the regulation but do reveal minor technical/procedural violations of the strict screening and disposition procedures fashioned to assure compliance with the general policy of not acquiring or retaining information unless it falls into one or more of categories of threats against military personnel, property or functions; and (c) they do reveal some isolated maintenance of domestic "intelligence" information previously acquired which had not been as rigorously screened and purged as current directives require. In every instance, prompt corrective action was taken on the spot or immediately thereafter. In one instance, the responsible official was relieved of his command after it was found that certain 1964–1969 civil disturbance planning documents had not been purged, due to an apparent misunderstanding and lack of diligence on the part of his command in complying with the applicable rules. It should become obvious from reading these summaries and from learning of the stringent corrective action taken that there is no "primary interest in merely promoting an appearance of compliance on the part of senior officials of the DoD." (page 101, *ibid*)

SECTION III.A.(2)

Question: Does the DIRC review the intelligence activities of the Defense Intelligence Service? If so, what has been the Council's findings in regard to this agency's compliance with the DoD regulation?

Answer: There is no such organization as the "Defense Intelligence Service." There is a Defense *Investigative* Service (DIS) but it does not engage in any intelligence activities. There is also a Defense Intelligence Agency (DIA).

The DIS conducts personnel security investigations on DoD military and civilian employees or on employees of Defense contractors who require a Defense Department security clearance. The DIRC does review the investigative activities of the DIS. The DIS is governed by DoD Directive 5200.27, and has been found to be in full compliance with that directive. A copy of the DIS's implementing directive relating to the subject of "Acquisition of Information on Persons and Organizations not Affiliated with the Department of Defense" is attached as Attachment 19. The Director of the DIS is a non-voting member of the DIRC.

The Defense Intelligence Agency (DIA) does engage in foreign intelligence activities which are not subject to the provisions of DoD Directive 5200.27. The extremely limited investigative activities of the DIA are internal within the Agency and are governed by the provisions of DoD Directive 5200.27. The Director of the DIA is a full member of the Defense Investigative Review Council (DIRC), and has assured the DIRC that his agency is in full compliance with DIRC policies.

SECTION III.A.(3)

Question: Does the DIRC review the intelligence activities of the National Security Agency?

Answer: No. The foreign intelligence operations of the NSA are specifically outside the purview of the Defense Investigative Program and outside the jurisdiction of the DIRC. NSA has two primary missions: a communications security mission and an intelligence information mission. Its responsibilities are concerned with obtaining foreign intelligence information deemed essential to the national security and with providing the greatest degree of security for classified U.S. communications. NSA does not have law enforcement responsibilities and does not engage in domestic surveillance and does not gather and maintain intelligence data on political activities. The Director, NSA/Chief, CSS, carries out his responsibilities subject to the direction and control of the Secretary of Defense. The Secretary does not utilize the DIRC to review the intelligence activities of NSA since they are unrelated to the responsibilities of DIRC. NSA's investigative activities are solely in connection with personnel security matters related to civilian and military personnel who are employed in or assigned to the Agency or who are applicants for such employment or assignment. These investigative activities by NSA over its own personnel are subject to oversight by DIRC. The NSA directive pertaining to investigations is enclosed as Attachment 7.

SECTION III.A.(4)

Question: Does the DIRC review intelligence activities of Defense Department units outside the continental United States? If so, what have been the DIRC's findings with respect to compliance in this area?

Answer: The DIRC does not review any "intelligence" activities anywhere. It does review investigative and related counterintelligence activities within the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and in U.S. territories and possessions. This means it acts only in certain areas outside the Continental United States as follows: the State of Hawaii, the Commonwealth of Puerto Rico, and the U.S. possessions (Namely: the Panama Canal Zone, the Virgin Islands, American Samoa, Guam and the guano islands.)

DIRC inspections have been conducted in Hawaii and in the Panama Canal Zone. Copies of these inspection reports are provided herewith as Tabs 8 and 9 to Attachment 18.

SECTION III.A.(5)

Question: Please submit copies of all DIRC reports with respect to compliance by DIS, NSA and intelligence activities by units of the Department of Defense.

Answer: The Defense Investigative Service (DIS) was formed by the Secretary of Defense in January 1972 and did not become fully operational until October 1972. DIRC inspection reports conducted since October 1972 include coverage of the DIS, as shown in Tabs 10 and 11 of Attachment 18.

The small investigative element of the NSA has not been the subject of a DIRC inspection.

There are no other "DIRC Reports" on "intelligence activities by units of the DoD."

(Attachments Follow)

ATTACHMENT 2

DEPARTMENT OF THE ARMY,
OFFICE OF THE ASSISTANT CHIEF OF STAFF FOR INTELLIGENCE,
Washington, D.C., October 8, 1971.

Subject: Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense (U).

COMMANDING GENERAL
U.S. Army Intelligence Command,
Fort Holabird, Md.

1. Attached are answers to the questions which you submitted in partial response to ACSI message 281441Z Jul 71, subject: One-Time Report. The answers represent further clarification by ACSI of Department of the Army letter, AGDA–A (M) (1 Jun 71) CS, dated 1 June 1971, subject: Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense.

2. Your questions reveal that your Command is earnestly attempting to search out the impact and ramifications of the 1 June letter. As we become more settled with the policy, the need for clarification should decrease, and we will develop the capability to solve problems at the lower levels where they arise.

3. You should be aware that these policies are constantly under review by ACSI, the Army Secretariat, and the Defense Investigative Review Council (DIRC). If a conflict arises between the guidance provided you and decisions made by the DIRC, the results of the resolution will be dispatched to you immediately.

For the Assistant Chief of Staff for Intelligence.

Question: May foreign intelligence collection operations be considered to consist of the collection, reporting, processing and storage of foreign intelligence information? If so, may the DA 1 June letter be interpreted to exempt any activity necessary to accomplish and support the collection, reporting, processing and storage of foreign intelligence information? If not, may prospective sources, recruited sources and associates or contacts of sources be considered affiliated? If not, under what authority can information on prospective sources, recruited sources and associates or contacts of sources be acquired or maintained?

Answer: Foreign intelligence collection operations are considered to consist of the collection, reporting, processing and storing of foreign intelligence informatoin. The 1 June letter is not applicable to activity necessary to accomplish the Army's foreign intelligence collection mission including recruitment, vetting and use of sources. The problem of information collected in geographic areas where the 1 June letter is inapplicable and transferred to areas where the letter does apply is under review by the DIRC.

Question: May counterespionage operations be considered to consist of the collection, reporting, processing and storage of foreign intelligence information? If the answer to either of the above questions is negative, what basis can be used to maintain source files?

Answer: Counterespionage operations are not foreign intelligence information by Army definitions. The 1 June letter does not apply to counterespionage operations conducted overseas. Counterespionage operations conducted in CONUS will be governed by AR 381–115. They will normally be bilateral and DA message 191601Z AUG 71, subject: Bilateral Counterintelligence Operations, applies, i.e., "the conduct of operations against foreign intelligence agencies in cases where a non-DoD agency has control is authorized; however, if the bilateral operation requires the penetration or the covert or otherwise deceptive surveillance of a domestic civilian organization by Army personnel, specific approval of the operation must be obtained in advance from the Under Secretary of the Army and the Chairman of the DIRC." There is no constraint on maintaining source files if the source is connected with an authorized operation. See Answer *A* for geographic area problem under review by DIRC.

Question: Is anyone, while on-post, considered affiliated with the DOD and therefore exempt from the provisions of the 1 June letter?

Answer: No. It was never the intent of the 1 June 1971 DA policy letter to cause an otherwise non-affiliated civilian to become affiliated by mere entrance onto an Army post or installation. The physical presence of an individual on a post or installation, without an indication of a threat referenced in paragraph 4 of the 1 June 1971 letter, is insufficient to warrant the acquisition, reporting, processing, or storing of information on the individual. However, an installation commander may have a person or group of persons escorted or their activities monitored, but not by technical methods, if considered necessary for purposes of base security. A post commander may direct military investigators to attend any meetings or demonstrations held on-post, whether or not they are authorized.

Question: Does para 4a of the DA 1 June 71 letter apply to *organizations* not affiliated with the DOD?

Answer: Yes. Paragraph 4a of the DA 1 June 71 letter does apply to civilian organizations not affiliated with the Department of Defense. The words "civilian organizations" should have been included in that paragraph, and will be included in a revision of the 1 June 71 letter or a DA clarifying letter.

Question: Is coverage of unauthorized demonstrations on or adjacent to US Army Recruiting Stations and National Guard facilities authorized under the DA 1 June letter? What criteria can be applied to insure that the terms of para 4a(4) of the DA letter are not violated with regard to activities or facilities not listed therein?

Answer: Paragraph 4a(4) of the DA 1 Jun 71 letter applies to federally owned or leased property occupied by US Army personnel, active or reserve. Coverage by military investigators of any on-post demonstration is authorized. Coverage of demonstrations on or adjacent to a US Army Recruiting Station which are likely to interfere with its operation is authorized. This coverage, however, must be strictly limited to the threat against the recruiting activities. Coverage of demonstrations on or near National Guard facilities is not authorized except when the National Guard unit and its facilities have been federalized.

Question: May the implied threat to USAINTC investigators posed by an inadvertent contact with an "Armed and Dangerous" individual justify the maintenance of a card file? May information concerning "Armed and Dangerous" persons be retained as long as such persons are carried in this status, although they do not fall within any of the retention categories in para 7 of the DA 1 June letter?

Answer: To preclude inadvertent confrontation between an "Armed and Dangerous" individual who considers himself threatened when contacted by a USAINTC investigator, appropriate card files may be retained by USAINTC subordinate units. These files should consist of cards on individuals not to be contacted due to the possibility of physical danger. The files will be based on reports from federal, state and local investigative and law enforcement agencies (primarily the FBI) and will contain the minimum amount of information needed to preclude inadvertent contact and a stated reason for inclusion in the file Inclusion in this file will not in itself result in the creation of an agent report, summary of information, dossier, or other files. Each file will be limited to the geographic area served by the office that maintains the file. Retention of these files is authorized as long as the individual is considered "Armed and Dangerous" and still resides in the geographic area served by the office maintaining the file. When a change of residence occurs, such an individual's card should be transferred to the USAINTC office serving the new residence area by forwarding the card to USAINTC. USAINTC will then forward the card to the USAINTC office serving the new residence area. The authority for the maintenance of this card file is paragraph 4a(5) which deals with direct threats to DOD military or civilian personnel in connection with their official duties.

Question: Does para 4d(2)(d) of the DA letter authorize USAIRR to retain a copy of approved characterizations indefinitely? If not, will the proponent of a characterization be required to notify USAIRR and other recipients when the characterization should be destroyed?

Answer: Yes. Para 4d(2)(d) of the DA 1 June 1971 letter authorizes USAIRR to retain a copy of approved characterization indefinitely, but only the most recent characterization. FBI characterizations must supersede other characterizations, except that recent Army approved characterizations may be retained if the FBI characterization is obviously outdated and a request for an update has been initiated. Subsequent revisions of Army directives on this subject will require the proponent of locally prepared characterizations to notify USAIRR and other recipients if the characterization should be destroyed.

Question: Do characterizations prepared by USAINTC require OACSI, DA approval?

Answer: Yes.

Question: Under what criteria may investigative checks be made on relatives or associates of an affiliated subject?

Answer: The following policy statement, applicable to the 1 June 1971 DA letter, was adopted by the DIRC on 20 September 1971:

"The question has been raised whether a NAC, LAC, file checks, or interviews of individuals about spouses, character references and/or close associates of an affiliated subject would be in conflict with the provisions of Department of Defense Directive 5200.27.

"Inasmuch as file checks or other investigation of spouses and associates of a subject of investigation are made for the purpose of determining eligibility of an affiliated person, and the object of the investigation is not to make any determination of eligibility concerning a non-affiliated person, there is no objection to conducting such limited inquiries. Care should be taken, however, to insure that the scope of the investigation of the non-affiliated person is limited to that necessary to make the required determination in the affiliated individual's case.

"The foregoing does not authorize an independent or unrelated investigation of a non-affiliated spouse, reference or associate. It will be noted that retention criteria authorize retention of information collected on non-DoD affiliated individuals and organizations incident to an authorized investigation, provided that there is no indexing in the DCII or cross-referencing of the information on non-affiliated individuals."

Question: What office or individual in DA is vested with the authority to direct this command to collect and report civil disturbance information? As a corollary, should USAINTC assume that Secretarial approval has been obtained?

Answer: On 16 April 1971 the Under Secretary of the Army issued specific guidance on the collection, reporting, processing, and storage of civil disturbance information. Under the subject "Authorization for Field Collection and Analysis" he stated:

"A. Only when the Secretary or the Under Secretary has personally and formally determined that a threat exists of a civil disturbance exceeding the law enforcement capabilities of local and State authorities may field commanders become involved in the collection or analysis of civil disturbance information.

"B. This Secretarial determination will, unless otherwise specified, allow the field commander involved to obtain relevant information by liaison through established channels from civilian agencies and to report, process, and store information during the duration of the disturbance.

"C. The required Secretarial determination must be formal and, except in emergency situations, in writing; in any case, formal written confirmation must be obtained even when a temporary oral authorization is given."

When approval is granted by the Secretariat for intelligence gathering to begin, ACSI will determine what information is necessary and will direct the collection effort.

Question: May all information acquired overseas be considered foreign intelligence information and therefore exempt from the retention criteria of the 1 June letter?

Answer: No. All information acquired overseas may not be considered foreign intelligence; however, the geographic limits of the 1 June letter are stated in paragraph 1a. The problem of information acquired where the letter is inapplicable and stored in areas where the letter does apply is under review by the DIRC.

Question: Does paragraph 7b(4)(iii) of the DA 1 June 71 letter provide the authority for retention of all files maintained to support the US Army History Program?

Answer: No. Paragraph 7b(4)(iii) of the DA 1 June 71 letter does not provide the authority for retention of all files maintained to support the U.S. Army History Program. That paragraph relates only to historical summaries of civil disturbance activity conducted by USAINTC, not to the activities of individuals and organizations not affiliated with DOD. Paragraph 3 of the 1 June letter states that the letter is the sole and exclusive authority for storing investigative and related counterintelligence information on civilians not affiliated with the DOD. If USAINTC is maintaining historical documents containing information the retention of which is prohibited by the 1 June letter, such documents should be sanitized or destroyed.

Question: Does the restriction imposed by para 8e of the DA 1 June 71 letter as modified by the DA message apply if the installation commander authorized the demonstration or meeting? Except for para 8e of the DA letter, do the other prohibitions listed in para 8 apply on-post?

Answer: Persons, solely because they are visiting on-post, are not affiliated with DOD as that term is defined by the DIRC. In the absence of an indicator of a threat referenced in paragraph 4 of the 1 June 1971 letter, the physical presence of an individual on a post or installation is insufficient to warrant the acquisition, reporting, processing or storing of information on the individual. However, an installation commander may have a person or group of persons escorted or their activities monitored, but not by technical methods, if considered necessary for purposes of base security. A post commander may direct military investigators to attend any meetings or demonstrations held on-post, whether or not they are authorized. The other prohibitions listed in paragraph 8 apply on-post, except that civil officials (para 8b) may be escorted while on-post if, in the opinion of the installation commander, the individual should be accompanied for purposes of base security.

Question: Is prior approval required for the surveillance of non-affiliated individuals when these individuals are associated with the subject of a legitimate counterintelligence investigation?

Answer: When in the course of an authorized surveillance in connection with an authorized investigation, the subject of the investigation associates with unknown prsons, surveillance of the unknown persons is authorized in order to establish their identity. If they prove to be persons not authorized to be investigated under AR 381–115, further surveillance must be held in abeyance pending FBI coordination and approval. Answer to Question B above applies.

Question: What governmental agencies may be given access to information obtained under the provisions of the 1 June letter? It is recommended that these agencies include those of the Federal Government as well as state and local law enforcement and investigative agencies.

Answer: Access must be given in accordance with AR 381–115 and may be given to any governmental agency, federal, state or local, which has a legitimate need-to-know and appropriate clearance.

ATTACHMENT 3

MAY 8, 1972.

Subject: Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense

COMMANDING GENERAL,
U.S. Army Intelligence Command,
Fort Holabird, Md.
ATTN: ICDO–PO

1. References:

a. DA Letter, AGDA–A(M) (1 Jun 71) CS, dated 1 June 1971, subject as above.

b. DA Letter, DAMI–DOI–P (STF), dated 8 October 1971, subect as above.

c. USAINTC Letter, ICDO–PO, dated 26 April 1972, subect as above.

2. This letter confirms the position taken by USAINTC regarding CONARC request to have USAINTC personnel "escort" a Socialist Workers Party candidate for the US Senate while on a US Army installation. The answers to the questions in reference 1c follow:

a. *Question:* May USAINTC personnel monitor or place under surveillance the on-post activities of Federal, state or local officials or candidates for such office for the purpose of base security if the official or candidate poses a threat as defined in paragraph 4a. reference 1a.

Answer: No. Paragraph 8b of reference 1a clearly states: "There shall be no physical or electronic surveillance of Federal, state, or local officials or of candidates for such offices."

b. *Question:* May USAINTC personnel be used to escort Federal, state, or local officials or candidates for such office for the purpose of base security?

Answer: No. Reference 1b gives permission for civil officials (and candidates) to be escorted while on-post, if in the opinion of the installation commander, the individual should be accompanied for purposes of base security. It would be inappropriate and in conflict with reference 1a for the escort officer to be a member of USAINTC. The appropriate escort officer should be a member of the staff of the installation commander. The escorting of civil officials or candidates for the purpose of base security is not a counterintelligence function.

For the Assistant Chief of Staff for Intelligence:

Charles W. Allen,
Colonel, GS,
Director of Operations.

Attachment 4

Department of the Army,
Office of the Adjutant General,
Washington, D.C., November 6, 1972.

Subject: Screening of the Army's Intelligence Files.

DISTRIBUTION:

- Office, Secretary of the Army
- Office, Chief of Staff
- Deputy Chiefs of Staff
- Assistant Chiefs of Staff
- Comptroller of the Army
- Chief of Research & Development
- Chief, Office of Reserve Components
- The Adjutant General
- Chief of Engineers
- The Surgeon General
- Chief of Chaplains
- The Judge Advocate General
- The Inspector General
- Chief, National Guard Bureau
- Chief of Information
- Chief of Military History
- Chief, Army Reserve
- The Provost Marshal General
- Chief of Personnel Operations
- Chief, US Army Audit Agency
- Commanders in Chief:
  - US Army Europe
  - US Army Pacific
  - US Army Forces Readiness Command
- Commanding Generals:
  - US Continental Army Command
  - US Army Materiel Command
  - US Army Combat Developments Command

CONUS Armies
US Army Military District of Washington
US Army Strategic Communications Command
US Army Security Agency
US Army Intelligence Command
US Army Air Defense Command
US Army Alaska
US Army Recruiting Command
Commanders:
US Army Forces Southern Command
Military Traffic Management and Terminal Service
Superintendent, US Military Academy

1. Reference is made to Department of the Army letter, AGDA-A(M) (1 Jun 71) CS, dated 1 June 1971, subject: Acquisition of Information Concerning Persons and Organizations not Affiliated With the Department of Defense.

2. The purpose of this letter is to reemphasize to all concerned that strict attention must be paid to the information retention criteria outlined in paragraph 7 of referenced letter and to the annual verification requirement contained in paragraph 7c of reference.

3. As a procedural measure, each command maintaining files containing information authorized by referenced letter will insure that each container holding such files contains a written statement showing the date of the annual verification conducted to verify the continued relevance or threat status to the Army of the information.

4. In accorance with paragraph 7c of reference, major commands and agencies maintaining intelligence files will submit a consolidated verification report covering the preceding fiscal year to HQDA (DAMI-DOI-P), Washington, D.C. 20310, not later than 7 August annually. The Reports Control Symbol for this report is DD-A(A)1118.

By order of the Secretary of the Army:

VERNE L. BOWERS,
Major General, USA
The Adjutant General.

ATTACHMENT 5

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., July 16, 1973.

Memorandum for members of the Defense Investigative Review Council.
Subject: Destruction of Investigative and Related Counterintelligence Files.

The Secretary of Defense has been requested by Chairman Ervin of the Senate Subcommittee on Constitutional Rights, Committee on the Judiciary, not to destroy or otherwise dispose of any records or documents which might have a bearing on the Subcommittee's inquiry into domestic intelligence. A copy of Senator Ervin's letter of July 3, 1973, to the Secretary of Defense is attached.

As you know, DoD Directive 5200,27, dated February 1, 1971, requires the destruction of investigative information acquired by Defense components within 90 days, unless longer retention is specifically authorized by DIRC retention criteria. Retention criteria approved by the DIRC permit certain "threat" information to be retained for one year, subject to annual review and revalidation.

In order that there shall be no question about our affirmative intent to respond fully to Chairman Ervin's request contained in the attached letter, and as an interim measure, it is requested that Defense components continue to screen, identify and segregate investigative information in accordance with regularly established procedures, *but withhold all destruction of such material until further notice.* Policy and planning documents relating to investigative matters likewise should not be destroyed until the request of the Subcommittee is clarified.

D. O. COOKE, *Chairman,*
Defense Investigative Review Council.

Attachment.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
Washington, D.C., July 3, 1973.

Hon. JAMES R. SCHLESINGER,
Secretary, Department of Defense,
Washington, D.C.

DEAR MR. SECRETARY: Because of recent information which has come to light regarding activities of various agencies of the Executive Branch in the area of domestic intelligence, I have directed the staff of the Constitutional Rights Subcommittee to initiate preliminary inquiries into this matter. The Subcommittee's inquiries are designed to supplement those of the Select Committee on Presidential Campaign Activities, and are in furtherance of the study the Constitutional Rights Subcommittee has been making since 1970 in this area.

Accordingly, I am writing to request that you not destroy, remove from your possession or control, or otherwise dispose or permit the disposal of any records or documents which might have a bearing on the subject under investigation.

Also, I should like to ask your cooperation in assisting the staff in its work. I ask, in particular, that you facilitate their access to any documents, information, or personnel pertinent to the activities of any organ or agency of the Department relating to domestic intelligence. I have authorized them, on my behalf, to examine and receive materials, whatever their classification, and I trust that classification will not prove any encumbrance to the staff's inquiries. Quite obviously, they will respect any conditions you may wish to impose for security reasons, since their only authority is to examine, receive and report to me on the results of their work.

It will expedite this inquiry if you would designate a member of your staff to act as your representative in dealings with the Subcommittee staff.

With kindest wishes,

Sincerely yours,

SAM J. ERVIN, Jr.,
Chairman.

ATTACHMENT 6

HEADQUARTERS, DEFENSE INTELLIGENCE AGENCY,
Washington, D.C., August 31, 1973.

COUNTERINTELLIGENCE

ACQUISITION OF INFORMATION CONCERNING PERSONS AND ORGANIZATIONS NOT AFFILIATED WITH THE DEPARTMENT OF DEFENSE

1. *Purpose:* To establish procedures under the Defense Investigative Program pertaining to general policy, limitations, procedures, and operational guidance with respect to the collection, processing, storage and dissemination of information concerning persons and organizations not affiliated with the Department of Defense (DoD).

2. *References:*

a. DoD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," 1 March 1971.

b. Defense Investigative Review Council Study Report No. 1, "Retention Criteria for Investigative Information," 5 May 1971.

3. *Scope:* This regulation applies to all DIA personnel except those engaged in the acquisition of foreign intelligence information and in activities ensuring communications security.

4. *Defintion:* The Defense Investigative Review Council (DIRC) defines the term used in DoD Directive 5200.27, "affiliation with the Department of Defense" as follows:

"A person, group of persons, or organization is considered to be affiliated with the DoD if they are:

"a. Employed by the DoD or by any activity under the jurisdiction of DoD, whether on a full time, part time, or consultative basis;

"b. Members of the Armed Forces on active duty, national guard members, those in a reserve status or in a retired status;

"c. Residing on, have authorized official access to, or conducting or operating any business or other function at any DoD installation or facility;

"d. Having authorized access to defense information;

"e. Applying for or being considered for any status described above in a, b, c, or d."

5. *Policy:*

a. The DoD policy prohibits collecting, reporting, processing, or storing information on individuals or organizations not affiliated with the DoD except in those limited circumstances where such information is essential to accomplishing the DIA missions outlined in paragraph 6.

b. The DIA will not normally collect information concerning persons or organizations not affiliated with the DoD. However, when collection activities are necessary to fulfill an essential requirement for information, maximum reliance shall be placed on the Service investigative agencies and domestic civilian investigative agencies—Federal, state, and local.

c. The DIA does receive, as an addressee, information concerning persons and organizations not affiliated with the DoD. This information will be handled in accordance with enclosure 1.

6. *Authorized activities:* Gather information essential to accomplish the following DIA missions:

a. *Protection of DIA Functions and Property.* Acquire information about activities threatening DIA military and civilian personnel and DIA activities and installations, communications equipment, and supplies. Only the following activities justify acquisition of information under the authority of this paragraph:

(1) Subversion of loyalty, discipline, or morale of DIA military or civilian personnel by actively encouraging violation of law, disobedience of lawful order or regulations, or disruption of military activities.

(2) Theft of arms, ammunition, or equipment, or destruction or sabotage of facilities, equipment, or records belonging to the DIA.

(3) Acts jeopardizing the security of DIA elements or operations, or compromising classified defense information by unauthorized disclosure or by espionage.

(4) Unauthorized demonstrations on or in DIA installations or facilities.

(5) Direct threats to DIA military or civilian personnel in connection with their official duties.

(6) Activities endangering facilities which have classified defense contracts.

ENCLOSURE 1

RETENTION CRITERIA FOR INVESTIGATIVE INFORMATION

1. Background:

a. This enclosure contains applicable provisions of DIRC Study Report No. 1, "Retention Criteria for Investigative Information," 5 May 1971.

b. Implementation of this study was directed by the DIRC on 17 May 1971.

2. Criteria for retaining information involving the protection of DIA functions and property: The following criteria provide the guidelines which specify the period of time that information pertaining to the protection of DIA functions and property will be retained.

a. Information on non-DoD affiliated organizations or individuals, acquired in accordance with paragraphs 6.a(1) through 6.a(6) is authorized for retention beyond 90 days subject to annual verification by the Director, DIA. At the time of the annual verification, continued retention is authorized when the organization or individual involved poses one of the following types of continuing threats:

(1) *Demonstrated Hostility.* Activities in which violent or criminal hostility has actually occurred within the previous year.

(2) *Threatened Hostility.* Activities which have explicitly threatened DIA functions during the previous year.

(3) *Potential Hostility.* Activities whose continuing hostile nature in the vicinity of DIA installations provide a significant potential source of harm to or disruption of the installaton or its functions.

(4) *Dissidence.* Activities which during the previous year have counseled or published information actually encouraging violation of law, disobedience of lawful order or regulations, or disruption of military activities.

b. Retain permanently information acquired in special operations in accordance with paragraph 7.e unless a lesser period is specified by the approving authority.

c. In order to aid appropriate authorities in evaluating certain non-affiliated organizations or individuals whose activities involve them with the DoD, retention of information is authorized for the period of time specified for activities which fall into one of the following categories:

(1) Activities routinely servicing DIA installations—1 year after the service is discontinued.

(2) Activities involving a request that DIA personnel attend or officiate at meetings, ceremonies, etc., as representatives of the DIA or DoD—1 year after the event.

d. Retain information pertaining to an authorized investigation not yet completed on the date of annual verification for 1 year or until the investigation is completed, whichever occurs sooner.

3. Criteria for retaining information pertaining to personnel security investigations: The following criteria provide the guidelines which specify the period of time that information pertaining to personnel security investigations may be retained:

a. Retain information collected on non-DoD affiliated individuals and organizations incident to an investigation for the period of time that the report itself may be retained as described in paragraph d below.

b. Reference card files listing firms, organizations, and individuals repeatedly contacted during the course of personnel security investigations—retain as long as the listings are relevant.

c. Brief evaluations of non-affiliated individuals or organizations utilized in adjudication of personnel security investigation—review these evaluations annually for pertinency. Retain the material upon which these evaluations are based for 1 year.

d. Retain personnel security investigations for 30 years maximum in accordance with Schedule 18, Federal Records Schedule, except as follows:

(1) Files which have resulted in adverse action against an individual will be retained permanently.

(2) Files developed on persons who are being considered for affiliation with DoD will be destroyed within 1 year if the affiliation is not completed.

4. Criteria for retaining information pertaining to operations related to civil disturbances: The following criteria provide the guidelines which specify the period of time that information pertaining to civil disturbance operations may be retained:

a. Retention of information is authorized for the period prior to the commitment of Federal troops as follows:

(1) Information described in paragraph 8.b—retain permanently.

(2) Early warnings, threat information, and situation estimates—60 days after the termination of the situation to which these refer.

b. Investigative information developed during the period troops are committed, or during a period when the Secretary of the Army has authorized civil disturbance information to be collected—60 days after the troops are withdrawn, or the situation terminates, except as authorized in paragraph c below.

c. After Action Reports and similar historical summaries may be retained permanently, but will avoid references to individuals or organizations to the greatest extent possible.

5. Files:

a. *Review and disposition of files.* Continually purge all files within the purview of this regulation on a routine basis. At the time any file is withdrawn for use review it to determine that it can be legally retained in accordance with procedures established by this regulation.

b. *Criminal and related files.* Retain criminal and investigative files and the records of acts or events occurring on DIA installations containing information concerning individuals and organizations not affiliated with the DoD in accordance with existing Federal Records Disposal Schedules.

c. *Published documents.* Nothing precludes the holding and usage of library and reference materials generally available to the public, including but not limited to those publications available through the Government Printing Office. Do not maintain such material or insert in subject or name files unless the information in question could be retained under other criteria authorized in this regulation.

d. *Exceptions.* Address requests for exceptions to the retention policies established by this regulation to the Chairman, Defense Investigative Review Council, through the Director, DIA.

* * * * * * *

b. *Personnel Security.* Conduct investigations relating to the following categories of persons:

(1) Members of the Armed Forces, including retired personnel and members of the Reserve components.

(2) DIA civilian personnel and applicants for such status.

(3) Persons needing access to official information that requires protection in the interest of national defense under the Department of Defense Industrial Security Program; or persons considered for participation in other authorized DoD programs under DIA cognizance.

c. *Operations Related to Civil Disturbances.*

(1) The Attorney General is the chief civilian officers in charge of coordinating all Federal Government activities relating to civil disturbances. Upon specific prior authorization of the Secretary of Defense or his designee, the Secretary of the Army, acquire information which is essential to meet operational requirements flowing from the mission assigned to the DoD to assist civil authorities in dealing with civil disturbances. Such authorization will only be granted when there is a distinct threat of a civil disturbance exceeding the law enforcement capabilities of state and local authorities.

(2) The DIA is not normally involved in operations related to civil disturbances. However, on instructions of the Assistant Secretary of Defense (Administration) (Chairman, DIRC) DIA will remain responsive to requirements from the Office of the Secretary of Defense.

7. Prohibited activities:

a. Restrict the acquisition of information on individuals or organizations not affiliated with the DoD to that which is essential to accomplish assigned DIA missions.

b. Do not acquire any information about a person or organization solely because of lawful advocacy of measures in opposition to the Government policy.

c. Do not use physical or electronic surveillance of Federal, state, or local officials or of candidates for such offices.

d. Do not use electronic surveillance of any individual or organization except as authorized by law.

e. Do not use covert or otherwise deceptive surveillance or penetration of civilian organizations unless specifically authorized by the Secretary of Defense or his designee, the Chairman, DIRC.

f. Do not assign DIA personnel to attend public or private meetings, demonstrations, or other similar activities for the purpose of acquiring information (the collection of which is authorized by this regulation) without specific prior approval by the Secretary of Defense or his designee.

g. Do not maintain computerized data banks on individuals or organizations not affiliated with the DoD unless authorized by the Secretary of Defense or his designee, the Chairman, DIRC.

8. Operational guidance:

a. Promptly report to law enforcement agencies any information indicating the existence of a threat to life or property or the violation of law. Keep a record of such report.

b. The following information may be directly acquired by overt means:

(1) Listings of Federal, state, and local officials who have official responsibilities related to the control of civil disturbances. Keep these lists current.

(2) Physical data on vital public or private installations, facilities, highways, and utilities, as appropriate, to carry out a mission assigned by DoD directives.

c. Restrict access to information obtained under the provisions of this regulation to Governmental agencies on a need-to-know basis.

d. Destroy information acquired under this regulation (regardless of when acquired) within 90 days unless its retention is required by law or retention is specifically authorized under criteria established by this regulation (see enclosure 1).

For the Director:

EDWIN P. LEONARD,
Colonel, USAF,
Assistant Deputy Director for Support.
D. M. SHOWERS,
Rear Admiral, USN,
Chief of Staff.

Enclosure: Retention Criteria for Investigative Information.

ATTACHMENT 8

FURTHER RESPONSE TO QUESTION I.D. (5)

(C) As indicated in the body of the response to this question, USAINTC has conducted no intelligence operations involving one Thomas Schwaetzer or one Max Watts. The 66th MI Group, Hqs U.S. Army Europe (USAREUR), however, conducted an investigation of Thomas (Tomi) Schwaetzer (alias: Max Watts), which included a wire tap of telephone No. 06223-3316.

(C) A-0088 was the control number assigned to the Schwaetzer case by the West German Agency responsible for wiretap activity.

(U) Thomas (Tomi) Schwaetzer is not and never has been a United States citizen. He was denied naturalization and deported from the United States in 1952. He was subsequently deported from France in 1968. He most recently carried an Austrian passport and resided in Heidelberg, West Germany.

ATTACHMENT 12

DEPARTMENT OF THE ARMY,
OFFICE OF THE UNDER SECRETARY,
Washington, D.C., June 30, 1972.

Memorandum for the Director of Military Support
Subject: Intelligence Support During Political Conventions at Miami Beach

The policies and procedures governing intelligence support during the Conventions at Miami Beach are approved as set forth in the attachment.

KENNETH E. BELIEU,
Under Secretary of the Army.

Attachment: As stated.

ARMY SUPPORT, FEDERAL CIVIL DISTURBANCE ACTIVITIES, MIAMI BEACH, FLORIDA, JULY-AUGUST 1972

INTELLIGENCE GUIDANCE

1. Intelligence Acquisition and Disposition

a. At Department of the Army level, military authorities will rely on the Department of Justice (DoJ) and the Federal Bureau of Investigation (FBI) to supply them civil disturbance intelligence information. The public media may be used to supplement early warning and threat information as authorized in the 1 June 1971 letter, "Acquisition of Information Concerning Persons and Organizations not Affiliated With the Department of Defense." This information may be furnished to the Task Force Commander without further authorization.

b. Committed troop elements may not acquire civil disturbance intelligence information, whether by liaison or otherwise, unless the Department of the Army (in accordance with appropriate Secretarial approval) authorizes this acquisition. This does not, however, prevent coincidental troop observation when such troops are committed to support civil law enforcement authorities nor the acquisition of information as a necessary by-product of operational liaison.

c. No Army resources will engage in intelligence collection in the field or otherwise unless specifically authorized in accordance with the provisions of the 1 June 1971 letter or as set forth herein.

d. All information acquired in connection with this operation will be processed and ultimately disposed of in accordance with the 1 June 1971 letter.

2. *Intelligence Support*

a. OACSI will participate in the DoJ Washington Intelligence Evaluation Committee (IEC) pursuant to request by Mr. Kleindienst on 17 May 1972. If warranted by the situation, OACSI will place a representative in the DoJ IEC for round-the-clock operation. Results of IEC participation by OACSI will be furnished Director of Military Support watch team in AOC. It is anticipated this will require a maximum of three analysts at the DoJ IEC.

b. OACSI will furnish Army participation in Miami Beach DoJ IEC, pursuant to request by Mr. Kleindienst on 17 May 1972. OACSI representatives in Miami Beach will participate in IEC threat assessment and will channel information from such assessment to DA and to the Task Force Commander. It is anticipated the Miami Beach requirement will be for three analysts in the Miami Beach DoJ IEC beginning o/a 3 July, and lasting through 14 July 1972 for the Democratic Convention. The same OACSI representation will be furnished during the Republican Convention beginning o/a 14 August and lasting through 25 August 1972. Communications and office support for OACSI representatives at Miami Beach IEC will be furnished by DoJ.

d. OACSI will be prepared to participate as required in the functioning of the AOC watch team, if AOC activation/augmentation is required.

ATTACHMENT 13

U.S. GOVERNMENT MEMORANDUM,
DEPARTMENT OF JUSTICE.
June 11, 1973.

To: Colonel Werner E. Michel, Chief, Counterintelligence and Security Division, The Pentagon.
From: Henry E. Petersen, Assistant Attorney General, Criminal Division.
Subject: Intelligence Evaluation Committee (IEC)

The IEC has been engaged in evaluating the potential for violence during various domestic situations. Now that the war in Vietnam has ended demonstrations carrying a potential for violence have virtually ended; therefore, I feel that the IEC function is no longer necessary.

Accordingly, effective immediately, the IEC is no longer in existence. If, in the future, estimates are needed concerning the potential for violence in a given situation, such estimates can be handled by ad hoc groups set up for that purpose.

ATTACHMENT 17

THE WHITE HOUSE

WASHINGTON

To: The Secretary of State; The Secretary of Defense; The Secretary of the Treasury; The Secretary of Commerce; The Attorney General; The Director of Central Intelligence; Military Representative of the President; Administrator, Federal Aviation Agency; and Chairman, Atomic Energy Commission.
Subject: U.S. Internal Security Programs.

1. In line with my continuing effort to give primary responsibility for the initiative on major matters of policy and administration in a given field to a key member of my Administration, I will look to the Attorney General to take the initiative in the government in ensuring the development of plans, programs, and action proposals to protect the internal security of the United States. I will expect him to prepare recommendations, in collaboration with other departments and agencies in the government having the responsibility for internal security programs, with respect to those matters requiring Presidential action.

2. Accordingly, I have directed that the two interdepartmental committees concerned with internal security—the Interdepartmental Intelligence Conference (IIC) and the Interdepartmental Committee on Internal Security (ICIS)—which have been under the supervision of the National Security Council, will be transferred to the supervision of the Attorney General. The continuing need for these committees and their relationship to the Attorney General will be matters for the Attorney General to determine.

RICHARD M. NIXON.

ATTACHMENT 18—INSPECTION REPORTS

INSPECTION REPORT 11

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., July 31, 1973.

Memorandum for the Defense Investigative Review Council.

Subject: Report of Unannounced DIRC Inspection of Army, Navy and Air Force and DIS units in the San Francisco Bay area.

On July 10–13, 1973, an unannounced DIRC inspection was conducted in investigative units of the three military departments and the Defense Investigative Service. This was the eleventh in a series of unannounced DIRC inspections, conducted pursuant to DoD Directive 5200.26. The inspection team consisted of:

Mr. D. O. Cooke, Deputy Assistant Secretary of Defense (Administration), Chairman of the DIRC and Senior Inspector

Mr. Rowland A. Morrow, Director, Defense Investigative Program Office and Executive Secretary of the DIRC

Colonel Werner E. Michel, USA, Assistant Deputy Director for Counterintelligence and Security, Defense Intelligence Agency, and Member, DIRC Working Group

Lt. Colonel Robert L. Jones, USAF, Executive Assistant, Defense Investigative Program Office, and Member, DIRC Working Group

Mr. Robert J. Waldman, Assistant to the General Counsel, Department of the Army, and Member, DIRC Working Group

An exit critique of the inspection was held on July 13, 1973, at the Presidio of San Francisco, attended by Mr. Cooke, the Deputy Commanding General of Sixth U.S. Army, command representatives from Travis Air Force Base and Twelfth Naval District, as well as representatives of all investigative organizations contacted during the preceding three days. Lists of persons and units contacted and attendees at the exit critique are attached at TABS "A" and "B."

I. EXECUTIVE SUMMARY

Unannounced visits were made to command and investigative units of the three military departments and the DIS, with primary emphasis on awareness of and compliance with DIRC-developed investigative policies. Both command and investigative units expressed an awareness of current policies and the constraints on acquiring information on persons and organizations not affiliated with the DoD. The only discrepancies noted during the inspection related to retention of material properly acquired. We emphasize that these discrepancies are of a technical nature and do not reveal any *operational* violation of DIRC policies. Nevertheless, they are indicative of improvements which can and should be made in assuring that DIRC retention criteria are implemented rigorously.

For example, whereas certain investigative reports of the OSI at Travis Air Force Base had been scrupulously scheduled for destruction in October 1973 (unless revalidated for continued retention by headquarters) copies of the same files in the base command element were over one year old and had not been subjected to any revalidation or verification procedure, as required by Air Force regulations. Also, we noted a lack of uniformity in the way the several Services hold and update characterizations of organizations. In both Army and Air Force we found FBI reports which we believe would have been screened out with a more rigorous screening procedure. Liaison with the FBI in the unusual circumstances at Wounded Knee presented a special problem.

Everywhere we found good faith efforts to comply with DIRC policies. The technical violations discussed in more detail in the body of the report reflect the kinds of fine-tuning required to assure that all units are uniformly and consistently implementing DIRC policies. Nowhere did either command or investigative personnel believe that current policies were impairing their ability to perform essential missions.

II. AWARENESS AND COMPLIANCE WITH DIRC POLICIES

As noted above, we found full awareness of current policies in all investigative units visited and no discrepancies were found in the operational area. That is to say, we found no instances of military investigative units being used to investigate civilian organizations or individuals, and there were no violations of the prohibitions contained in DoD Directive 5200.27. The discrepancies we noted, and which we discuss in some detail for their instructional value, related primarily to implementation of DIRC retention criteria. These discrepancies encompassed several different categories as follows:

Screening of Material received from the FBI

Past inspections uniformly have shown a procedure for screening all FBI and other agency reports immediately upon receipt, with prompt disposal (destruction) if the report contains no information of relevance to the Department, and retention of relevant material for a specified period of time. During this visit at Travis Air Force Base, we found the OSI was retaining FBI reports *not* in the "threat" category for 90 days, the minimum allowable period of retention, and then destroying them. These reports had been stamped for 90-day retention in the mistaken impression that all material, whether "threat" information or otherwise, could be retained for this minimum period. There does not appear to be any legitimate purpose for keeping these irrelevant reports for even 90 days; if they do qualify for retention because of a "threat" to military personnel or functions, their retention in all probability would exceed 90 days and extend to one year, and thereby be subject to annual validation. Similarly, at the Sixth U.S. Army Headquarters Intelligence and Security Division, we also found a FBI report had been retained in excess of 90 days and there was nothing on its face which reflected any threat to DoD functions, personnel or property. The particular report was dated in 1972 and reflected information on a number of different civilian organizations and individuals who were involved in a coalition group staging a protest demonstration against the President of the United States at San Clemente. If such reports are, in fact, relevant but their relevance is not apparent on their face, it might be desirable to attach an explanatory memorandum thereto when placed in the file. Such a practice would aid immeasurably during the annual validation procedure.

Characterizations of Organizations

Brief evaluations characterizing civilian organizations or individuals are authorized for retention by field elements, subject to annual review of pertinency. The Army's 1 June 1971 letter requires that all characterizations be approved at Department of the Army level and that they be reviewed, revised and updated annually. At Sixth U.S. Army and Post Headquarters we found some characterizations which were over a year old and had no evidence on their face that they were the latest, updated version of the Department of the Army approved characterization. The MI Group Headquarters which services the Army units in the area did have a complete set of the latest Department of the Army characterizations. We were subsequently informed that a complete updated set was also in the possession of the Sixth U.S. Army Intelligence and Security Division Chief. It is our observation that if any unit is holding any characterization of an organization, it should insure that it is the latest version and that it has been subjected to annual validation.

The OSI District at Travis Air Force Base had on file only two characterizations of organizations active in the area, one prepared by the Naval Investigative Service and one apparently prepared locally. Neither had any evidence on its face that it had been reviewed annually for pertinency, as required by DIRC retention criteria. Our observation here is that a complete set of characterizations authorized by Headquarters, similar to the approved holdings of the Army and Navy, would be desirable. The Air Force already has rigorous annual verification procedures which require specific Under Secretarial approval for continued retention of investigative information on nonaffiliated organizations. At this one location, it was the local belief that Organizational Characterizations were exempt from the annual validation procedures. Clarification for field units of this latter point by Air Force Headquarters appears desirable.

The NISO, San Francisco, had an up-to-date file on NIS Headquarters approved characterizations which appeared to meet all DIRC standards. In addition, NISO had a locally prepared report on the "Center for Defense Information," (CDI), an organization headed by retired Rear Admiral Gene R. LaRocque, USN, which report had been prepared for use by the local command in responding to requests for information from the CDI. Inasmuch as the organization did not fall within the "threat" category, retention of this particular characterization would be questionable except for the fact that the person who runs and "is" the organization is "affiliated" with the Department of Defense. Because Admiral LaRocque is reportedly also an advisor to former Presidential candidate McGovern (a fact not shown nor known to the preparers) we suggested to the local NISO that the investigative report be purged from their files, but the information be passed to the PIO or similar office required to respond to such inquiries.

Annual Validation Procedures

As we previously noted following our unannounced visit to Fort Dix, New Jersey, more foolproof annual validation procedures within Army appear necessary. This inspection tended to support this same conclusion as shown by the holding of one FBI report discussed above, and the unvalidated organizational characterizations at Post Headquarters at the Presidio. It is our observation that the current practice of certifying that the contents of each safe meet current retention criteria is not sufficiently stringent to minimize the possibility of inadvertent retention of unauthorized holdings. Also, there is evidence that the volume of current holdings in Army field units is now much more manageable so that a rigorous system could be fashioned to fix responsibility for retention of each individual document. Annual validation procedures already adopted in Air Force and Navy have this feature. Across the board adoption of such procedures now appears both necessary and feasible.

In addition, although the Air Force system is a very rigorous one and in prior inspections appeared to be operating well, we found investigative reports on hand in the Command Section (Office of Security Police) at Travis Air Force Base which were over a year old and had not been subjected to any annual verification action. Copies of the identical investigative reports on hand in the OSI District Headquarters at Travis had been approved for retention until October 1973, at which time they were to be destroyed (unless revalidated because of new information of a threat nature). From this fact, we conclude there is a greater need to insure that all elements within command as well as investigative channels comply with the annual verification procedures of AFR 124–13. On this point, we hasten to point out that had permission been sought to retain the particular reports, it undoubtedly would have been granted at Under Secretarial level for at least the same period as allowed for the OSI District on the same base. The point is that the prescribed procedure had not been followed. As noted in the preamble to this section, these deficiencies are of a technical procedural nature. Nonetheless, they indicate a need for continued emphasis and refinements of procedures in noninvestigative sectors of the community, such as command elements.

Base Contingency Plans

Another issue which surfaced at Travis AFB for the first time during a DIRC inspection concerned the so-called Counterintelligence Annex to Base Defense Plans. The format of such plans typically includes a section entitled "Estimate of Enemy Situations" or "Enemy Forces." The particular plan for Travis AFB contained input from the local OSI District headquarters office which we judged to be entirely proper within the context of DIRC criteria. The estimate referred to several local dissident organizations which were targeted against Travis AFB and which might be thought to pose a real or potential threat to the base. On the other hand, the OSI had on file similar contingency plans for three other Air Bases in California which contained information on "enemy" forces which had not been prepared by OSI and which reflected little sensitivity to DIRC concerns. For example, one such plan listed a group of Communist front organizations as potential threats to the base, including the Communist Party, the People's World (a west coast weekly Communist newspaper), the Abraham Lincoln Brigade (a long-defunct organization which supported the Loyalist cause during the Spanish Civil War), the California Labor School, and others. The same plan revealed the number of known Communist Party members, by county, in California. Without dwelling on the professional aspects of such a threat assessment, it was obviously missing the essential element of "threat" to the military establishment and relevance to that particular base.

To the credit of OSI, the local District recently had raised the issue with its headquarters of the Plan's compliance with DIRC oriented Air Force directives, but no answer had been received. The cure seems to be a stronger requirement that threat assessments for base contingency plans be prepared and cleared through AFOSI channels so that an appropriate level of professionalism, accuracy, relevance, and DIRC-compliance can be assured. In addition, a system for annually up-dating the threat estimate would be desirable so as to comply with annual validation procedures.

Army "Garden Plot" Civil Disturbance Planning Packets

City planning packets on file with Army units were inspected for their compliance with requirements of the Army's 1 June 1971 letter. With the exception of one such plan found at the Presidio Post headquarters, all such documents had been issued since publication of the DA policy and conformed to the new policies. The one plan dated in 1969 contained evidence that it had been edited so as to delete certain portions on organizations, in compliance with the 1 June 1971 letter, but a section on "local personalities" which named members of organizations such as the Communist Party, Socialist Workers Party, and others, had not been affected by the deletions. It appeared that in up-dating this one 1969 plan, the "personalities" section had been overlooked. In our view, they should have been deleted entirely so as to comply with section 6.e. of the 1 June letter.

III. EFFECTIVENESS OF OPERATIONS WITHIN DIRC POLICIES

The inspecting team attempted to assess the effectiveness with which investigative units are operating within the constraints of DIRC policies. Everywhere we inquired in various ways whether the current policies were impairing the ability of units to perform assigned missions. As we have found in prior inspections, negative responses were received to these questions. One commander noted that we don't know what information we are not receiving, but at the critique the DIRC principal observed that we never did know. No specific examples were known to anyone of an information lapse, or failure to receive essential data affecting the military, because of DIRC prohibitions.

The team made a point to inquire about *nuclear weapons security measures* as they interface with the operation of DIRC policies. The view has been expressed in Washington that a great emphasis needs to be placed on tasking other agencies (FBI, CIA, local police, etc.) to furnish Defense with information on terrorist and other extremist groups which might be motivated to damage or steal or nuclear weapon for purposes of sabotage or blackmail. For this reason, the inspecting team inquired of all three Service investigative organizations in the Bay area whether (1) this was a special problem, and (2) whether anything needs to be done. Uniformly, investigative personnel believe that there is no prohibition which would affect the timely transmittal, receipt and dissemination of any information showing a threat to nuclear weapon security. The MI Group had recently issued instructions to Field Offices emphasizing and reminding them of standing instructions to report information within the "threat" category, with special emphasis on nuclear weapons security. NIS believes current procedures and liaison relationships are adequate to insure the timely reporting of any information affecting the security of nuclear weapons, especially during movements from one locale to another. All were aware of OSD interest in this subject and have recently examined their procedures to assure that there is no lapse in reporting relevant information.

In summary, in the Bay area we detected no problem in the proper understanding of the right and duty to report any information directly relating to threats to military personnel, functions and property. Conversely, we also detected no inclination on the part of investigative personnel to use nuclear weapons security as a "bootstrap" pretext for collecting information on local dissident groups on the tenuous theory that one of them might at some unknown time be motivated to commit an act of sabotage against the establishment. This possibility, of course, always exists and might come from any quarter of our society (right or left) or as an individual aberration, as we have seen in cases of political assassinations during the past ten years.

Liaison remains a subject of much emphasis on the part of all investigative personnel. We found that all three Service investigative organizations, CID Command, and the DIS have good liaison relationships with both Federal and local law enforcement and security organizations. Regular biweekly Delimitations Agreement meetings are attended by investigative unit staffs, and the DIS has been invited to attend, although not a signatory of the Agreement. Monthly "8-Ball" luncheon gatherings of law enforcement people are also well attended. The value and necessity of continued cultivation of liaison contacts on all governmental levels appeared to be well recognized, particularly in the context of receiving information on threats to military property, nuclear weapons, firearm thefts, etc., or affecting military personnel.

The Wounded Knee Uprising

A special liaison issue brought to the Team's attention arose in the Army this past Spring in connection with the Indian occupation of *Wounded Knee*. The Sixth U.S. Army was tasked to provide certain logistical support for Federal Marshals and FBI agents during the days of confrontation in that small village in South Dakota. For a brief period, troops of the 4th Division were alerted but that alert was cancelled within four hours. The CG, Sixth U.S. Army understandably desired information on the situation at Wounded Knee, to assess the kinds of support which might be required, and asked the G–2 (Intelligence and Security Division) to find out. In a civil disturbance situation, direct liaison with local FBI or law enforcement would be prohibited unless and until authorized at Under Secretarial level. This was not considered a civil disturbance situation by DA, however, but at the time there was some likelihood that Federal troops might be committed, as suggested by the alert. It was, however, at least an aid to civil authorities situation, which called for some assessment (at least from a logistical point of view) of what the situation was. Inasmuch as the FBI was the primary Federal agency in the town, with US Marshals in strength, it was logical to obtain information from the FBI. USAINTC properly disapproved any intelligence collection activities by its personnel because of the lack of any threat to the Army and because liaison had not been authorized at Under Secretarial level. The Sixth Army Intelligence and Security Chief thereupon called the FBI and received a briefing on the situation, including information relating to the American Indian Movement (AIM) involvement in the fracas. To his credit, after it became clear that only logistical support would be required, and the situation subsided, the Intelligence Chief took pains to destroy all records of the information on the AIM obtained via FBI liaison.

It was the Team's view that intelligence on the local situation should have come to the Sixth Army from the Departmental level, so that it would have been unnecessary for the Sixth Army to initiate an intelligence-oriented inquiry into what was going on. Inasmuch as the 1 June 1971 letter of Army prevents liaison in civil disturbance situations until "turned-on" at the highest departmental level, it would seem logical that the same guidelines should apply to other comparable situations. The Wounded Knee uprising was sufficiently unique, and a gray area, neither wholly civil disturbance nor assistance to civil authorities (in the usual context of flood, hurricane and other natural disasters), that we are unable to conclude a clear violation of the 1 June letter occurred. The potential for unauthorized intelligence collection on the American Indian Movement certainly existed, a fact well recognized by the field personnel. Had Headquarters, Department of the Army clearly established authority to disseminate limited information to the field, it would have been unnecessary for field personnel to risk violating DA instructions of 1 June

1971. As we noted above, the intelligence spot reports created at the time have since been destroyed. Also, we were informed that after-action reports properly were limited to the number of C-rations, parkas, etc. provided.

We recommend that for the future such anomalous situations be treated with the same strict procedures as fashioned for the more classic civil disturbance situations. This would require that local commanders be instructed on a case-by-case basis when liaison with FBI or other civil law enforcement authorities can be undertaken.

IV. CONCLUSIONS

This inspection disclosed full operational compliance with DoD investigative policies, but surfaced a number of discrepancies of a technical/procedural nature which require some improvements in annual verification and validations procedures. It identified the need for IGs and other to check more carefully in non-Investigative organizations to insure compliance with Service retention criteria. It suggests the need to continue to fine-tune the system to insure that city planning packets are sanitized and characterizations of organizations kept up-to-date; moreover, that unauthorized and inappropriate intelligence information does not creep into base contingency plans under the guise of an estimate of the "enemy situation." It failed to substantiate fears held in some quarters that the general constraints on gathering information on domestic organizations and individuals have weakened nuclear weapons security. Finally, it highlighted the hazards of liaison in a unique situation as at Wounded Knee.

Respectfully submitted,

Rowland A. Morrow,
Director, DIPO.
Werner E. Michel,
Colonel, USA,
Asst. Deputy Director for CI and Security, DIA.
Robert L. Jones,
Lt. Col., USAF,
Executive Assistant, DIPO.
Robert J. Waldman,
Asst. to the General Counsel,
Department of the Army.

Attachments.

APPROVAL

As the Defense Investigative Review Council principal chartered to conduct this eleventh DIRC inspection, I directed the areas to be covered by the Team, participated in the exit critique at San Francisco, California, have discussed the details of the team's findings with them, and approve this report.

D. O. Cooke,
Deputy Assistant Secretary of Defense.

INSPECTION REPORT 10

Office of the Assistant Secretary of Defense,
Washington, D.C., May 21, 1973.

Memorandum for the Defense Investigative Review Council.

Subject: Report of Unannounced DIRC Inspection of Army, Navy, Air Force and Defense Investigative Service units in the New York City—Fort Dix—McGuire Air Force Base Area.

On May 8–11, 1973, an unannounced DIRC inspection was conducted in investigative units of the three military departments and the Defense Investigative Service. This was the tenth in a series of unannounced DIRC inspections, conducted pursuant to DoD Directive 5200.26. The inspection team consisted of:

Honorable Frank Sanders, Under Secretary of the Navy and Navy Member of the Defense Investigative Review Council

Mr. Rowland A. Morrow, Director, Defense Investigative Program Office and Executive Secretary of the DIRC

Lt. Colonel Robert L. Jones, USAF, Executive Assistant, Defense Investigative Program Office and Member, DIRC Working Group

Mr. James W. Jones, Assistant to the General Counsel, Department of the Air Force and Member, DIRC Working Group

Mr. Earl Richey, Assistant Director for Operations, Naval Investigative Service, Department of the Navy

An exit critique of the inspection was held on May 11, 1973, at McGuire Air Force Base, New Jersey, attended by Under Secretary Sanders, representative from command of NavCom 3, Fort Dix and McGuire Air Force Base, as well as representatives of all investigative/security organizations contacted during the preceding three days. Lists of persons and units contacted and attendees at the exit critique are attached at TABS "A" and "B."

I. EXECUTIVE SUMMARY

Unannounced visits were made to command and investigative units of the three military departments and the DIS, with primary emphasis on awareness of and compliance with DIRC-developed investigative policies. Air Force, Navy and DIS units were found to be in full compliance in all sites visited; although Army units are in full operational compliance, some civil disturbance city packets were found on file in the MI Field Office at Fort Dix, dating back to 1964, which clearly do not meet current retention criteria. These particular records had been the source of some apprehension for their custodians who were repeatedly assured by their higher headquarters they were permitted to retain the records, and they did so although admittedly the records had no current value from an operational point of view. For the latter reason, the Team did not perceive any tangible harm flowing from the Field Office's continued retention of the records, except they highlight the fallibility of an inspection system which assured a fairly low-level field office they could retain the very kind of material which initially gave rise to the "military spying" controversy and promulgation of policies flowing from the DIRC. This finding alone seems to justify continued DIRC inspections, as well as the need for a more foolproof annual verification system within Army. At all points contacted, investigative and command elements appear to have a sound understanding of current investigative policies and profess no impairment of their ability to perform missions within the constraints of the policies.

II. AWARENESS AND COMPLIANCE WITH DIRC POLICIES

Navy Units—The NISO-New York is an investigative headquarters covering four Naval Districts throughout the northeastern and north central part of the United States. The headquarters has only recently assimilated the files of NISO-Chicago, NISO-Boston and NISO-Philadelphia, which have been disestablished in the NIS's post-DIS posture. A monumental effort to purge file holdings and bring them into conformity with current retention criteria has been completed. This effort resulted in purging of some 6 million 3x5 cards, and an estimated 15 tons of file material. Spot checks of remaining files revealed no discrepancies. There did not appear to be any ambiguity over the kinds of files which could be retained, although a desire to retain certain types of "crank" files was expressed by the operational personnel.

Air Force OSI—The OSI District headquarters at McGuire Air Force Base has jurisdiction at Air bases in New Jersey, Delaware, Pennsylvania, the greater New York City area, part of Maryland, Goose Bay and in the Azores (McGuire is a MAC base, with easy access to the Azores). Full operational compliance with DIRC policies was noted and check of the files revealed no discrepancies. A substantial portion of their current workload involves criminal cases. The OSI commander expressed some misgivings over the holding of DIRC Study #11, which disapproves the use of military personnel as informants or sources for civilian law enforcement agencies. The Inspection Team pointed out that the purpose of the DIRC ruling growing out of this Study was to avoid violations of posse comitatus and involvement of military personnel in purely civilian law enforcement if there was no military interest or responsibility. Hence, the language of the DIRC decision reads:

> "*Except in cases where concurrent military investigative responsibility exists*, DoD command and supervisory officials shall not sanction or lend

> affirmative support for the use of DoD personnel as prospective sources or informants for civilian law enforcement agencies in the 50 states and the District of Columbia." (underlining added for emphasis)

This clarification which distinguishes cases wherein there is a dual military/civilian involvement in the investigation (such as narcotic traffic originating in the civilian community and coming onto base) was gratefully received.

Army Military Intelligence—The Team visited the Field Offices of the 109th MI Group located at both Fort Hamilton and Fort Dix and also visited with the Fort Dix Security Section (G–2) which was part of the command structure of Fort Dix. Full compliance with DIRC-approved policies was noted at Fort Hamilton Field Office and in the Security Section of the Fort Dix headquarters.

The Fort Dix Security Section had on file copies of organizational characterizations for use in adjudicating personnel security cases, but they had no way of knowing whether the characterization was the latest version of an approved ACSI characterization. On the other hand, the Fort Dix Field Office had on file similar characterizations prepared and approved at Washington level, together with an annual "validation" of the characterization. At our suggestion, the information relating to the annual validation by ACSI of the organization description will be passed on to the Post Security Section.

At the Fort Dix Field Office of the 109th MI Group the inspecting Team found approximately a safe drawer and a half of old "Garden Plot" files and city packets, dating from 1964 thru 1971, which contained material relating to non-affiliated organizations and personalities which does *not* meet DIRC retention criteria. These files had been the source of some anxiety on the part of the present and formerly assigned personnel, who had repeatedly been assured on three prior occasions by inspectors from USAINTC that it was permissible to retain the files. Inasmuch as none of them were current Garden Plot plans, their utility was minimal, except from an historical interest point of view. The Field Office has an electrical message on file dated in February 1973 which advised them that further guidance as to the disposition of city planning packets would be forthcoming, which message was interpreted as containing authority to retain the files until further instructions are received. From these circumstances, it appears that the field office was acting in good faith in retaining the files, although we believe a cursory examination would reveal the impermissible nature of the contents of the planning packets, especially those dated prior to 1971.

Concerning the Fort Dix Field Office files referred to above, the Inspecting Team believes the continued retention at this late date of such material demonstrates the need for more foolproof annual verification of file holding procedures within Army units.

One other point which arose at the Fort Dix Field Office relates to the dissemination of DIRC policies to subordinate units. In discussing the activities of the Progressive Labor Party at Fort Dix in the past, which included staging demonstrations outside the Post courtroom where courts-martial were taking place, the Team inquired whether current policy would permit monitoring of such demonstrations *on-post*. The local MI personnel were of the opinion that the Army's 1 June 1971 letter prevented them from observing or reporting on the activities of a civilian organization (such as the PLP) even when their activities occurred on-post. They had not received word of the clarification of policy flowing from the DIRC's inspection critique at Fort McPherson and the subsequent DIRC Meeting (see Minutes of DIRC Meeting, September 20, 1972, item 5).

In fairness, it should be pointed out that this is the first discrepancy noted in any USAINTC unit in over a year and a half of DIRC inspections.

Defense Investigative Service—This was the first DIRC inspection of a DIS field location since the DIS became operational last October. As expected, the DIS has no record holdings relating to non-affiliated individuals or organizations and in view of their mission of doing PSI's on affiliated persons, is not experiencing any problems relating to DIRC policies. In visits to other organizations in the investigative community, we noted a good spirit of cooperation and support for the DIS, and DIS inclusion in monthly Delimitations Agreement meetings even though the DIS technically is not a signatory to the Agreement.

III. EFFECTIVENESS

At all locations visited, the Inspection Team received negative response to our inquiries whether current policies were impairing their ability to perform missions. Investigative units appeared to be well-informed concerning anti-military movements in the vicinity of their installations. All testified that the quality of liaison with local federal, state and municipal police authorities was outstanding. Our investigative personnel are aware of the potential for seeking DIRC approval for special operations should a situation develop where liaison and other means of gaining information regarding threats to the military are inadequate.

IV. CONCLUSIONS

Units of all three Services and DIS in the greater New York City area are in substantial compliance with DIRC policies initiated almost two years ago. With the exception of the civil disturbance files which inexplicably had been retained at the Foxt Dix Field Office, no other discrepancies were noted. We believe the findings of this inspection warrant continued inspection of field units. Also, we believe better techniques could be developed of identifying whether there are other pockets of such files being retained contrary to regulation. One possible approach, would be the initiation within Army of annual verification procedures similar to those employed in Air Force and Navy. Also, better dissemination of DIRC decisions to field units appears in order. Overall, investigative units are operating within DIRC policies and do not report any impairment of mission accomplishment as a result of the almost two-year history of such policies.

Respectfully submitted.

Rowland A. Morrow,
Director, DIPO.
James W. Jones,
Asst. to the General Council.
Office of the Secretary of the Air Force.
Robert L. Jones,
Lt. Col., USAF.
Executive Assistant, DIPO.
Earl Richey,
Assistant Director for Operations.
Naval Investigative Service.
Department of the Navy.

APPROVAL

As the Defense Investigative Review Council principal chartered to conduct this tenth DIRC inspection, I directed the areas to be covered by the Team, participated in the exit critique at McGuire Air Force Base, New Jersey, have discussed the details of the Team's findings with them, and approve this report.

Frank Sanders,
Under Secretary of the Navy.

INSPECTION REPORT 9

Office of the Assistant Secretary of Defense,
Washington, D.C. February 14, 1973.

Memorandum for the Defense Investigative Review Council.

Subject: Report of Unannounced DIRC Inspection of Army, Navy and Air Force Units in the Panama Canal Zone.

(U) On January 29–31, 1973, an unannounced DIRC inspection was conducted in investigative units of the three military departments, as well as certain headquarters elements, in the Panama Canal Zone. This was the ninth in a series of unannounced DIRC inspections, conducted pursuant to DoD Directive 5200.26. The inspection team consisted of:

Honorable Kenneth E. BeLieu, Under Secretary of the Army and Army Member, Defense Investigative Review Council

Mr. Rowland A. Morrow, Director, Defense Investigative Program Office and Executive Secretary of the DIRC

Mr. Raymond P. Boulanger, Office of General Counsel, Department of the Army, and Member, DIRC Working Group

Lt. Colonel E. W. Beauchamp, USA, Chief, Plans, Policy and Programs Branch, Counterintelligence Division, ACSI, Department of the Army

Lt. Colonel Robert L. Jones, USAF, Executive Assistant, Defense Investigative Program Office, and Member, DIRC Working Group

(U) An exit critique of the inspection was held on January 31, 1973, at Headquarters, USARSO, Fort Amador, Canal Zone, attended by Under Secretary BeLieu, General William B. Rosson, CINCUS–SOUTHCOM, all three component commanders in SOUTHCOM, and representatives of all organizations contacted during the preceding two and one-half days. Lists of persons and units contacted and attendees at the exit critique are attached at TABS "A" and "B."

I. (U) EXECUTIVE SUMMARY

Unannounced visits were made to command and investigative units of the three military departments in the Canal Zone, with primary emphasis on awareness of and compliance with DIRC-developed investigative policies. Air Force and Navy units were found in full compliance with the policies and professed to have harbored no doubts that the new policies applied in full force to them in the Canal Zone. The Army units, on the other hand, represented that they had only recently (within the past few weeks) been advised officially by Department of the Army that the policies did apply to the Canal Zone because of its status as a possession of the United States. As a result of this misunderstanding arising out of differing interpretations of the applicability of the 1 June 1971 letter, materials are on file in the USARSO G–2 Records Repository, Fort Amador, requiring purging action. Corrective action was initiated promptly after the receipt of guidance from the Department of the Army and continues on a priority basis. It should be added that USARSO decided early-on that it would comply "in spirit" with the June 1971 directive, and avoided engaging in all prohibited operational activities within the Zone. Hence, violations found to exist relate only to records retention and a rigorous screening and purging procedure is in process. In summary, the Army G–2 and MI elements in the Canal Zone is now undergoing the initial rigors of complying with DIRC retention requirements announced over a year and a half ago. Although the Inspection Team believes that this issue should have been resolved immediately following publication of the 1 June 1971 letter it is satisfied that corrective action, with strong command backing, is now underway.

II. (U) AWARENESS AND COMPLIANCE WITH DIRC POLICIES

The Air Force and Navy investigative units located in the Panama City area (Howard Air Force Base and Fort Amador, respectively) evidenced a good working familiarity with DIRC prohibitions, retention criteria, and validation procedures. Examination of their files revealed very scant holdings, with no violations of retention criteria. At the time of annual validation of records, the OSI District Office had reported to Headquarters AFOSI that it had no investigative documents which it wished to retain in excess of 90 days. With respect to both the OSI and NIS it must be pointed out that their resources in the Canal Zone are extremely limited (10 OSI personnel, 3 personnel), their current workload is limited to PSI and on-base criminal investigations, and is similarly very small. There are no developments of counterintelligence significance which require either the OSI or NIS to collect information concerning threats to the military. This can, for the most part, be explained by a total absence of any organized efforts of dissidence, underground newspapers, GI coffee houses, or other manifestations of anti-military activities seen in various locations in the United States.

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III. (U) USARSO'S COMPLIANCE WITH DOD DIRECTIVE 5200.27

A summary of the Inspection Team's findings with respect to the Army's compliance with DoD Directive 5200.27 is set forth below:

—Initially USARSO did not consider that the Army implementing directive applied to the Canal Zone.

—While not believing the Army's 1 June 1971 letter applied fully to the Canal Zone, the USARSO resolved to comply "in spirit." Certain files on U.S. personalities were purged from their holdings. More significantly, attendance at civilian meetings in the Zone and covert penetrations of civilian organizations within the Zone were avoided.

—Also to their credit, USARSO did not advise Department of the Army that all their record holdings were in full compliance with the current directive but rather that they did not collect or store information on persons or organizations in CONUS. This "negative pregnant" should have alerted Department of the Army of USARSO's misunderstanding of the ground rules.

—After having been advised that the new directive did apply to the Canal Zone because it was considered a "possession" within the meaning of DoD Directive 5200.27,[1] USARSO initiated inquiries to Department of the Army seeking clarification of their role in view of the provisions of the Delimitations Agreement which gives the Army jurisdiction for certain types of cases in the Canal Zone which are reserved to the FBI in the CONUS.

—On January 12, 1973, ACSI DA advised USARSO that the Delimitations Agreement conferred jurisdiction on the Army to conduct certain types of cases (espionage, counterespionage, sabotage and subversion) but that these kinds of cases must be conducted in accordance with Departmental directives.

—Upon arrival on the scene, the DIRC team found USARSO in the process of screening their files to bring them into compliance with the DA letter of 1 June 1971.

—The USARSO staff expressed their concern to the DIRC Team that the recent DA clarification would inhibit the Army in the performance of its overall mission of defending the Canal. Thus, the question was raised whether USARSO could investigate threats by persons within the Zone to the Panama Canal itself. In the absence of any FBI in the Canal Zone, and only limited capability on the part of the Canal Government's Internal Security Office (ISO), the DIRC Team was asked whether the Army would have jurisdiction to fill the void and investigate direct or potential threats to the Canal locks, for example. The Team felt this was a valid isue which must be resolved especially in the light of earlier rulings that the entire Zone is not a DoD installation, and because of the absence of any designation of the Canal as a "key defense facility." The Team's recommendation on the subject is set forth below.

—USARSO, with strong command backing and interest, is undertaking a vigorous file screening project. A representative from ACSI, Department of the Army, flew down during the Team's visit to assist the USARSO staff to identify those files to be (1) destroyed; (2) retained because of affiliation with the Department, or because of some continuing threat; or (3) transferred to the Canal Zone Government. A deadline of March 15, 1973, has been requested by USARSO and approved by DA to complete their file screening and bring them into compliance with the 1 June 1971 letter.

—The Army's role assigned by the Delimitations Agreement to conduct "espionage, counterespionage, sabotage and subversion" cases within the Canal Zone has required minimal commitment of resources. No one has any memory of having been tasked by the FBI to conduct any such case. The Canal Zone Government representative from their Internal Security Office estimated that the Governor had requested Army to investigate only about six cases in the past 10 years. Two of these were suspected sabotage cases and the other four fell in the subversion category, none being of major importance. Hence the so-called "FBI role"[2] of the Army in the Canal Zone is not of such magnitude or scope as to justify some broad exception to standard investigative policies. during the critique were as follows:

IV. THE POST-INSPECTION CRITIQUE

(U) The critique held on the afternoon of the third day of the unannounced inspection enjoyed full command and staff attendance. Major points made

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[1] Sec. 101, Title 10, U.S. Code defines the "Possessions" of the U.S. to include "the Virgin Islands, the *Canal Zone*, Guam, American Samoa, and the Guano Islands."

[2] Everyone agreed that the Army's "FBI role" is a misnomer inasmuch as the Army has jurisdiction only in the four categories enumerated above and does not cover the full spectrum of FBI investigative responsibilities.

(U) 1. The Canal Zone is unique in certain respects. It is contiguous to a foreign policy which has a significant interest in altering the present arrangements regarding our control over the Canal Zone. And, unlike the continental United States, the FBI does not have investigative resources within the Canal Zone to advise of impending civil disturbances beyond the law enforcement capability of Canal Zone authorities or investigate direct threats to the Canal. The U.S. Southern Command has the overall mission of defending the Canal Zone.

(U) 2. DoD Directive 5200.27 and the various departmental implementations of that directive apply to the Canal Zone proper. It applies not just to U.S. citizens but to all persons when they are within the Canal Zone.

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(U) 4. Without doubt, information may be acquired on threats to defense personnel and/or facilities in accordance with DoD Directive 5200.27. In view of the responsibilities of SOUTHCOM and the absence of FFBI capability within the Canal Zone, although the entire Canal Zone cannot be considered a "key defense facility," the only logical way to apply DoD Directive 5200.27 and the 1 June 1971 letter to the local situation is to consider the Canal Zone and related Canal operational facilities as a "key facility." Thus, information could be acquired on direct threats such as sabotage attempts to the Canal and its related operational facilities, in accordance with the provisions of the 1 June 1971 letter. The Inspection Team stated they would recommend that the DIRC approve this interpretation of the directive, and endorse the proposition that the "Canal and its related operational facilities" (but not the entire Zone) be treated as if it were a "key defense facility" for the purposes of DoD Directive 5200.27. USARSO will define which related operational facilities fall within this category. (Note: The Key Facility list is limited to establishments or sites within CONUS.)

(U) 5. In the case of civil disturbances anywhere within the Canal Zone likely to exceed the law enforcement capabilities of the Canal Zone Government, it would seem most appropriate for civilian authority to authorize the collection of information by Army resources. Thus, in cases where there is advance warning, the decision to "turn on" Army Intelligence within the Canal Zone should be made by the Under Secretary of the Army. However, in the unlikely case there is not adequate time to receive approval of the Under Secretary of the Army, the CG, USARSO should have authority to authorize direct acquisition of information on civil disturbances if the Canal Zone Governor advises that his forces cannot be expected to control the disturbances. Subsequent notification of this fact to the Under Secretary is required.

(U) 6. At the direction of the Under Secretary, USARSO in conjunction with USSOUTHCOM and the ISO, Canal Zone Government, is developing a SOP for civil disturbance intelligence collections.

(U) 7. Concerning files, USARSO will proceed with their screening, and purging of files. Certain of these will be transferred to the Internal Security Office of the Canal Zone Government if they fall within that office's area of interest.

V. (U) CONCLUSIONS

(U) 1. The Navy and Air Force are in full compliance with DIRC policies within the Canal Zone. The Army in the Canal Zone although late in its compliance, is now on-track and is dedicated to full compliance with DIRC policies.

(U) 2. Because of the unique situation in the Zone, the absence of FBI coverage, the critical value of the Canal and its supporting operational facilities as a national security asset, and the need for a prompt response to any local threats to the Canal, it is recommended that the "Canal and its related operational facilities" be treated as a Key Defense Facility for the purposes of DoD Directive 5200.27 and the Army's implementing directive of 1 June 1971. If the DIRC approves this recommendation, it shall be understood that the Army, in investigating threats to the Canal (as if it were a Key Facility) will be bound by all the other provisions of the 1 June letter, which is to say that covert penetrations of civilian organizations in the Zone, attendance at public meetings, etc. must be authorized at the appropriate Under Secretarial or

Chairman of the DIRC level. Further, Canal Company employees do not become affiliated by reason of the treatment of the Canal as a "Key Defense Facility."

(U) 3. Internal follow-up actions, including those noted in the body of this report, should be taken to assure that full compliance with USARSO is accomplished without further delay.

Respectfully submitted.

ROWLAND A. MORROW,
Director, DIPO.
RAYMOND P. BOULANGER,
Office of General Counsel,
Department of the Army.
Lt. Col., E. W. BEAUCHAMP, USA,
Chief, Plans, Policy and Programs Branch,
CI Division, Department of the Army.
Lt. Col. ROBERT L. JONES, USAF,
Executive Assistant, DIPO.

APPROVAL

As the Defense Investigative Review Council principal chartered to conduct this ninth DIRC inspection, I directed the areas to be covered by the Team, participated in the exit critique at Headquarters USARSO, Fort Amador, Canal Zone, have discussed the details of the Team's findings with them, and approve this report.

KENNETH E. BELIEU,
Under Secretary of the Army.

INSPECTION REPORT 8

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., October 27, 1972.

MEMORANDUM FOR THE DEFENSE INVESTIGATIVE REVIEW COUNCIL

Subject: Report of Unannounced DIRC Inspection of Army, Navy and Air Force Units in Hawaii.

On October 2, 3 and 4, 1972, an unannounced DIRC inspection was conducted at investigative units of all four Services, at headquarters and field unit levels, in the State of Hawaii. This was the eighth in a series of unannounced DIRC inspections, conducted pursuant to DoD Directive 5200.26. The inspection team consisted of the following:

Mr. D. O. Cooke, Deputy Assistant Secretary of Defense and Chairman, Defense Investigative Review Council

Mr. Rowland A. Morrow, Director, Defense Investigative Program Office and Executive Secretary, Defense Investigative Review Council

Col. Werner E. Michel, USA, Assistant Deputy Director for Counterintelligence and Security, Defense Intelligence Agency

Lt. Colonel Robert L. Jones, USAF, Executive Assistant, Defense Investigative Program Office and Member, DIRC Working Group

Mr. Arthur G. Klos, Chief Program Analyst, Defense Investigative Program Office, OASD(Comptroller)

An exit critique of the inspection was held on October 5, 1972, at Headquarters USARPAC, Fort Shafter, Hawaii, attended by Mr. Cooke, other inspection team members, and representatives of all organizations contacted during the preceding three days. Lists of persons and units contacted and attendees at the exit critique are attached at TABS "A" and "B."

I. EXECUTIVE SUMMARY

Major investigative units of the three military departments, as well as the counterintelligence officer of Fleet Marine Force/Pacific, were visited during this unannounced inspection on the Island of Oahu, Hawaii. Visits were also made to command and staff elements of the three departments and major headquarters with responsibilities throughout the Pacific area, although primary emphasis was upon investigative units in the State of Hawaii where DIRC prohibitions and policies are directly applicable. Units of all four Services evidenced awareness of the investigative policies announced in DoD Directive 5200.27 and all operations are being conducted in strict compliance with the policies relative to acquisition of information on persons and organizations not affiliated with the Department of Defense. Although no deviations from the policies were detected from an operational point of view, the team did discover certain discrepancies in the NISO-Hawaii office relating to retention of records accumulated in the past, as discussed more fully below. DIRC-directed policies caused little initial impact on operations on the Islands due to the relatively benign domestic situation and because of the general lack of serious dissidence or civil disturbance activity either now or in the past. Consequently, the policies announced by DoD Directive 5200.27 have caused no impairment of mission accomplishment.

II. AWARENESS AND COMPLIANCE WITH DIRC POLICIES

As indicated above, there is a full awareness of the investigative policies inaugurated by DoD Directive 5200.27 at all levels within the investigative world. Service implementing instructions appeared to be well understood and strict compliance with the main thrust of the directives was observed, although DIRC retention criteria are differently interpreted by the Navy than in Army and Air Force.

It was in the latter area that the only discrepancies in full compliance with DIRC policies were detected. NISO-Hawaii personnel were advised that their interpretation of retention criteria was somewhat unique; we also stated we did not question the good faith with which the interpretation was made but the result was that files on non-affiliated persons or organizations were being retained in excess of one year, without express permission (verification) from the Secretary of the Navy. No matter how pure the motivation might be, the team expressed its misgivings that the files in question met retention criteria contained in the SECNAVINST, adding that instructions on their proper disposition would be communicated through Navy channels.

The questionable files in NISO-Hawaii custody fell into three categories:

—*Characterizations of Organizations*—In cases in which an official characterization of an organization of security interest had been prepared and disseminated by NIS headquarters, the NISO-Hawaii has retained whatever investigative reports it had received over the years, primarily from the FBI, as "back-up" for the official characterization. It was admitted that the back-up material was of little or no use, but it was believed that the preparation of an official characterization on the organization had established the general validity for retention of the back-up reports, which dated back over a number of years. No verification for retention of this back-up material in excess of one year had been received from higher headquarters. Its retention appears contrary to paragraph 3.d. of the DIRC Retention Criteria Study (Encl4 to SECNAVINST 3820.2A).

—*Threat-type information*—NISO-Hawaii has retained a limited number of files relating to personalities on the Island who are thought to pose a continuing threat to DoD functions and property. DIRC Retention Criteria authorize retention of certain information falling into the "threat" categories in excess of 90 days, subject to annual "verification" by the Secretary of the Military Departments. NISO-Hawaii interprets this provision to mean that no annual verification is required, and that the information may be retained, if some new information of a threat nature is received within the past year, in which event the entire file accumulated over the past years can be retained to the next anniversary of the latest date. This interpretation is unique within our experience. Even assuming that certain or all of the personalities pose a continuing threat to DoD functions or property, there does not appear to be any way to avoid getting Secretarial permission for its continued retention beyond 90 days, at the time of annual verification. The number and volume of files retained within this category at this location demonstrate the need for additional guidance from NIS headquarters as to their proper disposition.

—*Co-mingled data*—One file on the Ku Klux Klan was found to contain information relating not only to the Klan but in addition to a number of other organizations. The explanation was that a summary update relating to a host of organizations had been received and rather than extract only the portion which related to the Klan it was easier to file the entire listing. This technique is subject to the abuse of retaining information relating to an organization because of its "threat" status, as well as information relating to organizations of no possible relevance to DoD functions. Although there was no cross-indexing to the other organizations on the list, knowledgeable personnel in the section would be aware that the "Klan" file contains data relating to other groups. The possible abuses inherent in this system can be avoided entirely by merely extracting the information relating to the Klan and disposing of the other information as its content might merit.

Air Force, Army and Marine Corps units

No discrepancies in file retention or operational matters were detected. The Marine Corps and Army have Counterintelligence detachments attached to tactical units, with limited jurisdiction within their base perimeters. These limitations are well understood by the G-2's of the tactical units. The possible dangers of tactical CI units being tasked to perform actions prohibited for professional investigative units such as the MI, OSI or NIS were frankly discussed. It was well understood that DIRC prohibitions apply to everyone and not just the MI or NIS. Elsewhere, examination of files and discussions with operational personnel revealed strict compliance with current policies. The Air Force, in particular, has a rigorous annual verification procedure, in which all information relating to non-affiliated persons or organizations is reported to OSI headquarters where it is screened and approval sought from the Under Secretary. Official approval recently had been received from the Under Secretary for retention of most, *but not all,* the information which the local OSI felt might be retained beyond 90 days. This procedure appears to be the least fraught with ambiguity.

An outstanding example of the type of information which qualified for retention beyond 90 days was spot reports filed by the OSI at Hickman Field relating to several incidents of blood being spilled on Air Force records and on an aircraft by an anti-war activist. Also, a number of organizations properly had retained information relating to the "Liberated Barracks," a local GI underground newspaper targeted against the military.

III. EFFECTIVENESS

At all echelons, the inspecting team received negative responses to its inquiries whether the current policies had impaired performance of their mission. Unlike some locales on the mainland, we did not encounter any vague discomfort with current policies as expressed by units which had grown used to having considerable information available about activities in the civil sector. The difference in attitude seems to be explained by the quiet domestic situation and lack of any substantial dissidence problems affecting the military. Notwithstanding the existence of "Liberated Barracks," a GI underground newspaper, and activities of a group known as "Catholic Action," which oppose the war and are generally anti-military, as well as the blood-pouring incident alluded to above, the local situation seems dominated by balmy winds and a salubrious surf. Although the possibility of future problems and the potential for DIRC approval of special operations was discussed, the present outlook seems relatively problem-free.

IV. LIAISON

Liaison with the FBI and local police was characterized as excellent on all fronts. Regular meetings and frequent business contacts result in a free flow of information, which engenders an atmosphere of rapport and mutual exchange of data of interest to the military departments. Although it was noted (as elsewhere) that FBI priorities are not the same as ours, and it may not put a premium of gathering information relating to GI underground newspapers, for example, no real information gap was cited to the Team. At the exit critique, the attendees were urged to let us know if any gap in coverage exists so that we might be able to bring pressure to bear at the Washington level to step-up coverage of a particular situation.

V. CONCLUSIONS

Investigative activities by DoD components in the State of Hawaii are being conducted in accordance with current policies as noted above. Certain limited files are being retained by NISO-Hawaii in apparent contravention of DIRC retention criteria, and without specific authorization (annual verification) from the Under Secretary of the Navy, pursuant to SECNAVINST 3820.2A. Other Service files are problem free. Mission accomplishment has not been adversely affected by current policies and the local situation presents no special problems requiring DIRC exemption from the constraints of DoD Directive 5200.27.

Respectfully submitted.

ROWLAND A. MORROW,
Director, DIPO.
Col. WERNER E. MICHEL, USA,
Asst. Deputy Director for CI & Sec., DIA.
Lt. Col. ROBERT L. JONES, USAF,
Executive Asst., DIPO.
ARTHUR G. KLOS,
Chief Program Analyst, DIPO.

APPROVAL

As the Defense Investigative Review Council principal chartered to conduct this eighth DIRC inspection, I directed the areas to be covered by the Team, participated in the exit critique at Fort Shafter, Hawaii, have discussed the details of the team's findings with them, and approve this report.

D. O. COOKE,
Deputy Assistant Secretary of Defense.

INSPECTION REPORT 7

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., September 19, 1972.

MEMORANDUM FOR THE DEFENSE INVESTIGATIVE REVIEW COUNCIL

Subject: Report of Unannounced DIRC Inspection in the Charleston, South Carolina—Atlanta, Georgia Area.

The seventh unannounced DIRC inspection was conducted in the Charleston, South Carolina—Atlanta, Georgia—Robins Air Force Base area, of Navy, Army and Air Force investigative units and command echelons, during the period August 28 to September 1, 1972. The inspection was conducted pursuant to Sections IV.3., IV.E., V.A.3. and V.B.2. of DoD Directive 5200.26, dated February 17, 1971. The inspection team consisted of the following:

Honorable J. Fred Buzhardt, General Counsel, Department of Defense

Mr. Robert T. Andrews, Deputy Assistant General Counsel, Department of Defense and Member, DIRC Working Group

Mr. Rowland A. Morrow, Director, Defense Investigative Program Office and Executive Secretary, Defense Investigative Review Council

Mr. James W. Jones, Assistant to the General Counsel, Office of Secretary of the Air Force and Alternate Member, DIRC Working Group

Lt. Colonel E. W. Beauchamp, USA, Chief, Plans, Policy and Programs Branch, CI Division, ACSI, Department of the Army

Lt. Colonel Robert L. Jones, USAF, Executive Assistant, Defense Investigative Program Office and Member, DIRC Working Group

An exit critique of the inspection was held on September 1, 1972, at Headquarters, Third U.S. Army, Fort McPherson, Georgia, attended by Mr. Buzhardt, the other inspection team members, and representatives of all of the organizations contacted during the preceding three days. Lists of all persons and units contacted and attendees at the exit critique are attached as TABS "A" and "B."

I. EXECUTIVE SUMMARY

Major investigative units of all three military departments were visited during this unannounced inspection in the Charleston—Atlanta—Warner Robins area. Courtesy visits were made to command elements, and Provost Marshal and Judge Advocate staff officers were contacted in the course of the visits, however, primary emphasis was upon investigative unit performance, practices and files. We found acute awareness of DIRC-directed policies among both command and specialist personnel. Full operational compliance with current investigative policies was noted, however, we found several minor discrepancies in compliance with retention criteria in each Service. The latter discrepancies were, in our opinion, not deliberate but resulted from either inadvertence or lack of sufficient attention to the strict retention criteria. Corrective action was taken on the spot but the team believes that a greater effort periodically to screen all files, especially in Navy custody, at field headquarters is indicated by the results of the team's spot checks. DIRC-directed policies are adequately understood but certain ambiguities about operations *on-post* and walk-in's needed to be clarified during the critique. Overall, the team concluded that the DIRC-directed policies have not impaired mission accomplishment but that continuing dialogue with field elements and periodic inspection is required to ensure understanding and compliance with the spirit and purposes of current investigative policies.

II. AWARENESS AND COMPLIANCE WITH DIRC POLICIES

As each previous DIRC inspection has demonstrated, we again found acute awareness among both investigative and command personnel of the current investigative policies inaugurated by the DIRC. Our questioning of investigative personnel assured us that the current policies are understood and are being strictly complied with from an operational point of view. That is to say, there are no investigative actions being undertaken which contravene the prohibitions and limitations of DoD Directive 5200.27 and Service implementing instructions.

The team did discover discrepancies in compliance with DIRC retention criteria, which were brought to the attention of personnel on the spot. Discrepancies found were:

Navy—Several examples of documents dated in 1970 which relate to non-affiliated personnel and organizations were found in the CI files. Retention of such documents might possibly be authorized beyond 90 days, subject to annual verification by the Secretary of the Navy, in accordance with SECNAVINST 3820.2A. However, there was no evidence of annual verification of these two-year old documents, nor of subsequent reports on the same subject which might bring the subject matter within the 90-day or under-one-year rule and thereby possibly justify retention of the entire file. It was our conclusion that the four or five documents uncovered during the spot check were symptomatic of broader discrepancies and indicate the need for greater effort and more rigorous screening of CI holdings in the Charleston NISO. It is further our impression that there was no conscious effort to circumvent or violate retention criteria but rather a failure to devote sufficient effort and resources to a rigorous screening program at this particular office. This finding is made notwithstanding the fact that the Charleston NISO reported a total destruction of record material since 1971 of 651.5 cu.ft. and a total volume decrease of minus-518.7 cu. ft. Despite this fairly monumental reduction of file holdings, our spot checks revealed additional documents the continued retention of which is questionable and which had not been "verified" in accordance with SECNAVINST 3820.2A of 1 November 1971.

Army—As seen elsewhere during DIRC inspections, the Army took stringent efforts to purge their file holdings to eliminate data on organizations and individuals not affiliated with the Department of Defense and posing no threat to DoD functions, personnel or property. Headquarters, Third U.S. Army and the 111th MI Group were no exception to this general rule. The Third Army DCSINTEL office had reduced their holdings from 7 or 8 safes to two drawers in one safe, and 4600 index cards were reduced to about 150 cards. Also, several countersubversive operations which had been underway were terminated with the announcements of the new policies circa 1970 and no operations are now underway which contravene current policies. Nevertheless, we found several documents in the DCSINTEL office relating to incidents in Puerto Rico involving anti-ROTC activities by Puerto Rican nationalist groups dated in 1970. These documents, as a technical matter, exceeded the time criteria for retention and no annual verification of their continued relevance or "threat" status had been made in accordance with the Department of the Army letter dated 1 June 1971. (It is noted that Puerto Rico falls within the Third U.S. Army area of responsibility.)

Air Force—Air Force procedures require a reporting to Headquarters, OSI of any documents being retained in field installations in excess of the 90 day rule so that Secretarial "verification" of their continued retention could be made. At Headquarters, District 6, OSI, at Robins Air Force Base, we found several documents in a file on non-specific complaints, the so-called "O" file, as well as one in the IIR file, which had not been reported to Headquarters for the annual verification. Although there was no apparent harm in the local retention of these documents which related to non-affiliated individuals or groups, there was a technical violation of Air Force procedures for reporting and getting approval for continued retention in excess of prescribed time limits. What this spot check indicated was a need for more detailed instructions to field units to check the DVP, IIR and "O" file, in addition to other normal files, for material which might require annual verification. As elsewhere, it was the team's impression that retention of these documents was not intentional but resulted from an inadvertent lapse of the sort: "we didn't think to look through those files for this kind of material." Significantly, references to non-affiliated individuals in these records had not been cross-indexed.

III. EFFECTIVENESS OF OPERATIONS WITHIN CURRENT POLICIES

At all echelons, the inspection team queried personnel whether the new policies had impaired their ability to perform their assigned missions. All responded in the negative. As in previous inspections, we encountered the view in the Army staff that the constraints on collections cause some uneasiness—"a queasy feeling"—that things may be happening we are unaware of. Of course, by this they mean events which may impact upon military personnel or functions. Nevertheless, no specific incidents could be given wherein the Army had failed to receive timely information on incidents, or events of relevance to Army functions. Thus it appears the uneasiness they candidly admit cannot be translated into any concrete complaint, lapse, or other evidence of any impact on mission accomplishment. On the other hand, Air Force and Navy personnel contacted did not reflect any misgivings or discomfort with current policies.

IV. LIAISON

All components consider their liaison with Federal and local police agencies to be excellent or superior. However, they did mention that FBI priorities are different from the military and that with limited resources the Bureau does not take as much interest in GI coffee houses or GI underground newspapers as we might desire. Also, one example of FBI unresponsiveness in a recent criminal case was cited to the team. The FBI did not have an agent to put on a theft of weapons complaint, therefore, the OSI investigated the matter all the way up to solving the crime after which a warrant for arrest was obtained by State officials, at which point the case was then turned over to the FBI. Notwithstanding this example of scarce resources on the part of the local FBI, there is close contact and harmonious personal relationships, bi-monthly IIC meetings, and regular exchanges of information of interest to the military.

V. TRAINING

The team touched briefly on the subject of training with investigative personnel and received favorable responses except for the comment that more emphasis could be given to report writing in th Army Intelligence School. On-the-job training in report writing, of course, is the alternative solution to this recurring problem. Army personnel have observed no appreciable change in training as a result of DIRC Study No. 6 on the Training and Accreditation of Agents.

VI. THE EXIT CRITIQUE

Representatives from all units contacted during the preceding three days attended the critique, which was chaired by the Honorable J. Fred Buzhardt, accompanied by Mr. Robert T. Andrews, of the Office of General Counsel. Questions raised during the critique concerned the following issues:

—Applicability of DIRC prohibitions *on-post*. This issue arose several months ago when a candidate for the Socialist Workers Party wanted to come on post to talk with Army personnel and the request was made by command for Army Intelligence personnel to accompany the candidate. This permission was refused and command was told to have the candidate accompanied by someone from local command resources. The critique audience was advised that DIRC prohibitions concerning physical surveillance of political candidates did not apply *on-post*, that any person coming on-post was considered "affiliated" at least insofar as our ability to observe their actions. One exception was cited by Mr. Buzhardt, namely *electronic* surveillance must be accomplished in accordance with the provisions of law. Although local command interpreted the decision by Army Intelligence as a refusal to have the SWP candidate surveilled on-post based upon DIRC prohibitions, it appears the decision was cosmetic rather than a flat denial. A clearer understanding of the rationale behind the decision not to have Army Intelligence but authorizing others to accompany the candidate would have allayed local fears that they did so at their peril.

—As a related matter, Mr. Buzhardt pointed out that the post or base commander can prohibit a candidate from coming on base to engage in political activity. A recent exception to this rule involved leaflet distribution on a main thoroughfare through Fort Sam Houston. In that case, the highway thru the post was for many years a de facto public highway and therefore could not be regarded as property on which post regulations forbidding leaflet distribution could be enforced with criminal sanctions. However, once a person strays off the "public" highway, they are subject to the regulations proscribing political activities on-base.

—Walk-in sources: There appeared to be some ambiguity as to how walk-in sources are to be handled. Some field personnel had the impression that all walk-ins, no matter what information they have to give, must be referred to the FBI or local police. The group attending the critique was advised that it depends on the subject matter of the source's information. Should someone wish to report plans for a civilian demonstration against a military base, that information is relevant to the protection of military functions, property or personnel and can be received. If, on the other hand, the person wishes to talk to military intelligence about, for example, a group in the civilian community, posing no conceivable threat to the military, this is of no interest to us, and the person should be referred to civilian authorities. One caution was offered: if a walk in furnishes information about a GI coffee house just outside the base gate and advises the coffee house is a center for dissident and anti-military activities, the information can be received, evaluated, disseminated and retained for a limited period. However, we should not ask the source to continue to attend the coffee house and report back, inasmuch as that would contravene the prohibitions and cannot be done without Under Secretarial permission.

VII. CONCLUSIONS

This unannounced inspection established that DIRC investigative policies are understood and are being substantially complied with. The only exception was the manner in which retention criteria are being applied in certain field offices, and corrective action was taken on the spot with additional follow-up necessary as indicated above. We detected no impairment of mission accomplishment as a result of current policies. Continued inspections by DIRC representatives and departmental inspectors appears to be indicated to assure uniform compliance and understanding at field installations.

Respectfully submitted.

Rowland A. Morrow,
Director, DIPO.
Lt. Col. E. W. Beauchamp, USAF,
Chief, Plans, Policy and Programs Br.,
CI Div., Dept. of the Army.
James W. Jones,
Asst. to the General Counsel,
Office of Secretary of the Air Force.
Lt. Col. Robert L. Jones, USAF,
Executive Assistant, DIPO.

APPROVAL

As the Defense Investigative Review Council principal chartered to conduct this seventh DIRC inspection, I directed the areas to be covered by the Team, participated in the exit critique at Fort McPherson, Georgia, have discussed the details of the teams' findings with them, and approve this report.

J. Fred Buzhardt.

INSPECTION REPORT 6

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., June 30, 1972.

MEMORANDUM FOR THE DEFENSE INVESTIGATIVE REVIEW COUNCIL

Subject: Report of Unannounced DIRC Inspection in the San Antonio-Fort Hood, Texas Area.

An unannounced DIRC inspection was conducted in the San Antonio-Fort Hood, Texas area, of the Air Force, Army and Navy investigative units, during the period June 4–8, 1972. The inspection was conducted pursuant to Sections IV.3, IV.E., V.A.3. and V.B.2. of DoD Directive 5200.26, dated February 17, 1971. The inspection team consisted of the following:

Lt. General D. V. Bennett, USA, Director, Defense Intelligence Agency, Senior Inspector and Member, Defense Investigative Review Council

Mr. Rowland A. Morrow, Director, Defense Investigative Program Office and Executive Secretary, Defense Investigative Review Council

Colonel Werner E. Michel, USA, Chief, Counterintelligence and Security Division, Defense Intelligence Agency and Member, DIRC Working Group

Mr. James E. Stilwell, Deputy Chief, Counterintelligence and Security Division, Defense Intelligence Agency and Alternate Member, DIRC Working Group

Lt. Colonel Robert L. Jones, USAF, Executive Assistant, Defense Investigative Program Office

The team was augmented for the inspection visit of District 10, Office of Special Investigations, USAF, being joined by an Air Force, DIRC oriented team composed of:

Mr. Bert Z. Goodwin, Assistant General Counsel, Department of the Air Force and Member, DIRC Working Group

Major Alan B. Hershon, USAF, Liaison Officer, OSI, and Alternate Member, DIRC Working Group

Mr. James W. Jones, Office of the General Counsel, Department of the Air Force and Alternate Member, DIRC Working Group

An exit critique of the inspection was held on June 8, 1972, at the Main Conference Room, Headquarters, Fifth U.S. Army, Fort Sam Houston, San Antonio, Texas, attended by the Director, DIA, the other inspecting team members, and representatives of all of the organizations contacted during the preceding three days. Lists of all persons and units contacted and attendees at the exit critique are attached as TABS "A" and "B."

I. EXECUTIVE SUMMARY

Investigative units of all three military departments were visited during this unannounced inspection-in the greater San Antonio area. The inspection touched only slightly on the Navy, as the Naval Investigative Service Resident Agencies in San Antonio and Austin, Texas are authorized but four agents, with a workload almost exclusively in PSI, and neither office is a repository for records of other than the work on hand. Army and Air Force, however, have several huge installations with post or base populations in the tens of thousands. The large city of San Antonio appears as thoroughly dependent on military support as the small town of Killeen existing on the edge of Fort Hood. Nevertheless, with this great military and military-oriented population, investigative files were at a minimum level, obviously well screened, and in strict compliance with DIRC retention criteria. All activities visited generally praised the quality and quantity of support received from FBI, other Federal and local police or investigative agencies though several commented that more information on GI coffee houses would be desirable. It was noted the San Antonio FBI office had increased the number of agents working security matters from two to five, and willingly shared collection products with the military. We found keen awareness of new investigative policies, strict operational compliance, and an honest deside to "do the job" within the DIRC framework. The workload at this time was noted to be quite moderate, which is perhaps fortunate, as each investigative activity was giving time and effort toward DIS planning. At all levels there was a healthy attitude of cooperation and an obvious desire to make the DIS work well.

II. AWARENESS AND COMPLIANCE WITH DIRC POLICIES

Every office visited displayed thorough knowledge of their departmental directives on acquisition of information concerning persons and organizations not affiliated with the Department of Defense. Even though there was some disagreement as to whether mission accomplishment was possibly weakened by compliance with the new directives, compliance has ensued. Commanders are well aware of the constraints on the operational latitude of their investigators, and were careful to not request the local units to do that which cannot now be accomplished without approval of higher headquarters. At Fort Hood, visits with the command elements verified that the MI Detachments assigned to two operational Divisions there, were well acquainted with DIRC policies, and confined their effort within the perimeter of the Post.

III. IMPACT OF DIRC POLICIES

As mentioned, the San Antonio-Fort Hood area and the military are closely allied. It is friendly environment; news media and the local citizenry are pro-GI, pro-establishment, law and order people. The image of the military investigator apparently has not been maligned. Only on some campuses and from the GI coffee house element has there been any concerted, continuing anti-military effort. Fort Hood has at its gates the oldest so-called GI coffee house in the country, the "Oleo Strut." The effect today of the "Oleo Strut" on the miltiary is open to question, and various points of view were expressed to the inspecting team. At the minimum, it was termed an irritant. On the opposite end it was called a threat, but a threat that cannot be firmly defined due to a lack of current knowledge.

In the past, the Army was well informed on "Oleo Strut" activity; however, since 1970, little or no information is received from local police or the FBI and what little is known comes from "Oleo Strut" publicity releases. Although Fort Hood intelligence personnel feel discomfort over the inhibitions of DIRC policies, investigative supervisors denied being "uncomfortable" under DIRC directives, but expressed some concern and frustration. If part of their mission is to keep the commander informed of possible threats to the base or its personnel, then the staff is failing insofar as the "Oleo Strut" is concerned. By being off-post, it is safe from official Army view, and if it does represent a threat and is working with any success to undermine the military, this may only be known by its successes and not in time to advise the commander so that timely protective steps can be taken.

Recently, two members of the Killeen, Texas Police Department testified before the House Committee on Internal Security, during hearings on subversive influences directed against the military. Press accounts of their testimony read like an indictment against Fort Hood authorities for their refusal to cooperate with local law enforcement and blamed new investigative policies. The inspection team explored this issue in some depth, with the conclusion that the testimony was more a complaint that under current investigative constraints, the Army in general is not able to join with local police in information gathering activities on anti-military groups or projects as they had done previously. All Fort Hood authorities, MI, CID and G2, termed their relations with the Killeen Police Department as excellent, and related that the two police officials told them in advance of their prospective testimony, what they planned to say, and that the thrust of their testimony was it was better for the little (35 man) Police Department of Killeen in the old days, when they could count on the Army's assistance off-post as well as on. Then, in the area of anti-war activism, they had better advance knowledge of what was going on and who was involved. Both Police officials, upon their return, claimed they were misquoted in the press, and were not in any way criticizing Fort Hood command and investigative personnel or the way they did their jobs. Liaison is reported as still very good.

The team visited the local FBI Resident Agency for the Killeen, Texas area, located on Fort Hood, and met with the Senior Agent in charge. He was well aware of the Army's desire to know more about the "Oleo Strut," but had to consider it as but one of his 75 to 80 investigations and not the highest in his list of priorities. Essentially, it seems that the "Oleo Strut" and its GI underground newspaper, the "Fatigue Press," continue to be quite active, though little information is available to judge the actual impact upon the post, except that last Fall about 100 GIs were mustered for an anti-war march in Killeen. The lack of answers to such questions, as how many active GIs or sympathizers exist on the post today, in what jobs and with what access to security information, does cause some concern. The Fort Hood G2 staff would like answers but are aware that getting them within the existing policies is difficult.

The NIS Resident Agencies in Austin and San Antonio, have a predominately PSI case load with the balance merely lead accomplishment for other NIS offices. DIRC policies have had almost no impact on these offices because they had few files to begin with—and after DIRC, almost none but case folders for current work. No characterizations of organizations were maintained at the Resident Agency level. Civilian-related information affecting the Navy came only from liaison with FBI and police officials.

At OSI District 10 headquarters in San Antonio, the team determined there had been little impact from DIRC influenced directives. The OSI mission was not changed in any significant way so it continued to be "business as usual." The USAF directive promulgating DIRC policy has been stressed both within OSI and with local commanders. Though a screening of files was prompted by DIRC policies, it led mainly to the destruction of old files and those of little value rather than those in violation of new policy. OSI expounded at length on their extremely good relations with the FBI and other police authorities. They cited examples of a free flow of information and stated their complete confidence in being furnished, solicited and unsolicited, any information developed by the civilian agencies, which relates to Air Force missions.

The 112th MI Group at Fort Sam Houston, and its Region 1 headquarters and a collocated Field office in downtown San Antonio, were naturally very similar operationally due to their close proximity. The commanders at each elvel termed the impact of DIRC ploicy as slight inasmuch as there had been a winding-down of special operations for some months prior to the Army 1 June 71 letter as well as some substantial trimmings of files. Post DIRC, the MI Group headquarters reduced their holdings of material from 7 safes to ½ a drawer of approved documents.

Coincidental with the team visit to the Headquarters, Fifth Army, a Federal law enforcement working level liaison meeting was hosted by the Region, to which the DIRC Inspecting Team was invited. From our observations, liaison in San Antonio appears outstanding. All participants, both civilian and military, demonstrated awareness and acceptance of DIRC policy.

The DCSINTEL of Fifth U.S. Army Headquarters characterized the impact of the 1 June 71 letter as substantial. They echoed the comments of the G2 of Fort Hood in their concern over the activities of the "Oleo Strut" and a similar coffee house adjacent to Fort Sam Houston, "The Broken Rifle," and expressed concern over the lack of knowledge about its members and plans. Also, like the Fort Hood G2, they evinced some concern that the Army civil disturbance mission would be weakened by the lack of sound, advance intelligence information. There was "anxiety" that responding troops might not be as prepared as they should be and concern that full reliance must be placed on the Department of Justice to obtain and collate the intelligence information needed by troops in the field to perform their duties. At DCSINTEL of Fifth U.S. Army, 90 linear feet of files and approximately 500,000 file cards had been destroyed. The team found full compliance with retention criteria and awareness there that obtaining this information was not now the Army's prerogative. Civil disturbance "city packets" were examined and found to be in full compliance with DIRC directives.

IV. EFFECTIVENESS

At each activity visited the question was asked, as to whether the new policies had impaired mission performance. The Navy and Air Force investigators, and Army command personnel, all assured the team they had not. The Army intelligence responses were somewhat qualified. Again, it was mentioned, that if the Military Intelligence unit mission is to provide the commander as much information as possible on a given target, they are failing to do this, due to current constraints. The "Oleo Strut" coffee house, a similar one near Fort Bliss (of interest to Fifth U.S. Army Headquarters) and "The Broken Rifle" coffee house adjacent to Fort Sam Houston, were cited as anti-war, anti-Army, activist run operations about which very little is now known. Similar concern was noted regarding the paucity of "intelligence" information available for potential Civil Disturbance operations. The worry existed that the Justice Department might not have available, when needed, the required operational intelligence for mission success. However, the balance of the Army investigator's role today was termed as being successfully accomplished within DIRC guidelines. Procedures and criteria for obtaining DIRC approval for a special operation was explained in some depth and the team was advised that previous requests made by the 112th MI Group and Headquarters, Fifth U.S. Army were still pending action by higher headquarters.

V. LIAISON

Each unit visited was aware of the need for good liaison, not only with Federal and state civilian agencies, but with each other. Discussions with FBI agents in San Antonio and Fort Hood verified their understanding of the effect of DIRC policy o nmilitary investigations, and their willingness to assist, within FBI rules. The "law and order" climate of the area and the good rapport between investigators, lends credence to the belief that military interests in this part of Texas will be fully protected within the bounds of DIRC policies.

VI. EXIT CRITIQUE

An exit critique was held in the Main Conference Room, Fifth U.S. Army Headquarters, Fort San Houston, San Antonio, Texas, on June 8, 1972, attended by Lt. General Bennett, by Major General Johnson, who is the Deputy Fifth Army Commander, the Inspecting Team, and representatives from all the organizations visited during the preceding three days. The Director, DIA, expressed his satisfaction over the findings of the inspecting team, that each activity visited was fully knowledgeable of DIRC policy and conscientiously following it. Good supervision, management and control by commanders and whole-hearted compliance by the staff was the overall finding announced to the critique attendees. The Director discussed at length the climate into which the DIRC was born, and from his first-hand knowledge, the troublesome areas that initially needed resolution. During a question and answer period that followed the more detailed report of the team, the subjects of information gathering through local liaison and special operations were addressed. It was reiterated, that for the foreseeable future the military investigative world will be dependent on the civilian counterparts for all information from the off-base civilian community of actions impacting on military sites. We must live with it—and we must make it work. Exceptions to this policy will be few, and must be well thought out, well documented and truly necessary. The team noted the high interest of commanders in the success of the investigative mission, their awareness of investigative problems as well as products, and encouraged this healthy understanding to continue.

VII. CONCLUSIONS

All three military departments were visited in this, the sixth unannounced DIRC inspection; the Army at Fort Hood and the Army, Navy and Air Force in San Antonio. Everyone received the team with apparent honesty and candor, holding back nothing and engaging in frank and open discussions. We found full operational compliance with announced DIRC policies, despite the personal reservations of some Army intelligence personnel that they could do a better job wth more latitude in exploring the possible threat to their posts by civilian led anti-war activities obviously targeted against them. Also, as noted, they professed some uneasiness in the civil disturbance area. Each activity that received FBI reports had a firm screening procedure in effect to insure retained documents were in consonance with DIRC retention criteria, and all files examined were found to be in accord with DIRC policy. We observed a healthy attitude concerning the establishment of the Defense Investigative Service (DIS), and concluded that DIS problems in this area should minimal.

Respectfully submitted.

Rowland A. Morrow,
Director, DIPO.
Werner E. Michel, Col., USA,
Chief, CI & Sec. Div., DIA.
James E. Stilwell,
Dep. Chief, CI & Sec. Div., DIA.
Robert L. Jones, Lt. Col., USAF,
Executive Asst., DIPO.

APPROVAL

As the Defense Investigative Review Council principal chartered to conduct this sixth DIRC inspection, I directed the areas to be covered by the Team, participated in the exit critique at Fort Sam Houston, Texas, have discussed the details of the teams' findings with them, and approve this report.

D. V. Bennett,
Lt. General, USA.
Director, DIA.

INSPECTION REPORT 5

Office of the Assistant Secretary of Defense,
Washington, D.C., May 24, 1972.

Memorandum for the Defense Investigative Review Council

Subject: Report of Unannounced DIRC Inspection in the Chicago, Illinois Area

An unannounced DIRC inspection was conducted in the Rantoul-Chicago, Illinois area, of Air Force, Army and Navy investigative units, during the period May 1–4, 1972. The inspection was conducted pursuant to Sections IV.B., IV.E., V.A.3., and V.B.2. of DoD Directive 5200.26, dated February 17, 1971. The inspection team consisted of the following:

Honorable Kenneth E. BeLieu, Under Secretary of the Army, DIRC Principal and Senior Inspector

Mr. Rowland A. Morrow, Director, Defense Investigative Program Office and Chairman, DIRC Working Group

Colonel Werner E. Michel, Chief, Counterintelligence and Security Division, Defense Intelligence Agency, and Member, DIRC Working Group

Mr. Ronald J. Greene, Assistant to the General Counsel, Office of Secretary of the Army, and Member, DIRC Working Group

Lt. Colonel Robert L. Jones, Executive Assistant, Defense Investigative Program Office

An exit critique of the inspection was held on May 4, 1972, in the Federal Court Building, 219 South Dearborn Street, Chicago, attended by the Under Secretary, the inspection team, and representatives of all organizations contacted and attendees at the exit critique are attached at TABS "A" and "B."

I. EXECUTIVE SUMMARY

Investigative units of all three military departments were visited during this unannounced inspection in the Chicago metropolitan area. Personnel Security Investigations (PSI's) occupy most of the manhours in this area, although the military populations at Chanute Air Force Base and Great Lakes Naval Training Center do generate a certain amount of criminal and CI case load. Although units in the area had been very active at the height of the Army civil disturbance intelligence collection program, and although previously some of the most sensational allegations focused upon units in the Chicago area, the situation at this time is relatively quiet. We found keen awareness of the new investigative policies, strict operational compliance, and considerable caution about overstepping permissible bounds. DIRC retention criteria appear to have been implemented differently among the three departments. Whereas Army has made a clean sweep of their files, and Air Force only required slight purging, the Navy is continuing an extensive effort to screen holdings accumulated since the 1930's, and additional purging of these files is required to comply fully with retention criteria. In one location, we found an unfortunate lapse in communication with the command element, which had the impression that military intelligence was in no position to be of any help whatsoever in the event a group seeks to invade the post. This impression was corrected on the spot, but it struck the team as being symptomatic of a continuing need to "emphasize the positive." Moreover, both command and field investigators expressed a desire to see the image of the military investigator improved in the public mind.

II. AWARENESS AND COMPLIANCE WITH DIRC POLICIES

Investigative units of all three military departments evidenced a clear awareness and understanding of their departmental directives on Acquisition of Information Concerning Persons and Organizations *not* affiliated with the Department of Defense. Operationally, we found careful efforts to acquaint all personnel with the new policies and to ensure compliance with them. In both Army and Navy, we found that investigative personnel were given quizzes to test whether they understood the new policies. Army personnel were required to certify that they "read, understand and will comply" with the policies. Training courses emphasize the policies, and the "DIRC" seems to have become a familiar catchword embodying the concept of strict investigative boundaries.

In meeting with command personnel at Fort Sheridan, the Post Commander reflected an erroneous impression that Army Intelligence could not be called upon for any information relating to dissident groups, even should they be (in the specific case at issue) at the gate threatening to reclaim the land in the name of their Indian forebears. The team was gratified to note that the local MI commander had recently (in April 1972) notified the commander in writing of the range of services available to him, including obtaining information relating to threats to military personnel, property or functions. Notwithstanding these efforts, there was still the belief with the commander that no information could be received or disseminated if it related to a civilian group, off-post. This misunderstanding struck the team as a communication problem, probably caused in part by the high intensity of criticism previously focused upon Army investigative units in the Chicago area. As noted above, emphasis on the affirmative, the "do's" as well as the "don'ts," continues to be needed.

III. IMPACT OF DIRC POLICIES

Throughout the Chicago area, the "Army spying" controversy had directly affected the daily activities of every unit, if only because of a serious public relations problem. The local press covered the allegations heavily, and continues to do so, since the most publicized incidents occurred in Chicago. This has affected the availability of information (particularly at universities) and has cause dsome civilians to act in an unpleasant or uncooperative manner. Local units seem, however, to be coping with this problem as well as could be expected.

Chanute Air Force Base, Rantoul, Illinois, was visited because it is the site of OSI District 12 headquarters, with jurisdiction covering five large states in the upper Mid-West. Little impact was experienced by the promulgation of the new investigative policies, although some purging of files was necessary. Operationally, there was no substantial change to missions of the OSI, and thus no impairment in information gathering or dissemination was experienced. In visits to the Commanding General of the Technical Training Center and the base commander, we found general awareness of the new policies and no problems created as a result of them. Although there had been some underground newspaper activity directed toward the base, and racial problems typically found on such military installations, DIRC policies had not impaired the command's ability to remain well informed on such matters.

The Naval Investigative Service Office in Chicago is headquarters for a ten-state area, with a predominantly PSI mission. The Great Lakes Naval Training Center and Glenview Naval Air Station are the major Navy installations in the area and present the normal workload of criminal cases. No particular problems were encountered as a result of the DIRC policies in this area. The NISO headquarters had a very substantial number of files accumulated from various sources since the 1930's but had begun a retirement or purging procedure before DIRC retention criteria became an issue. The file room at the present time contains about 100 empty file cabinets recently emptied, and four out of five index-card bins are now empty. Whereas previously 13 file clerks had been required to index, card, file and maintain this mass of material, the file room staff is now down to two employees. Nevertheless, and notwithstanding the monumental effort to purge extraneous material on civilian organizations and personalities, the Inspecting Team found that the NISO continued to have some holdings which do not meet DIRC retention criteria. Their purging program has been a continuing one. The staff acknowledged that they still had work to do to complete a systematic screening of present holdings, and acknowledged that certain documents surfaced in a random check of the files would have been disposed of had that material been found in their screening process. The problem was obviously one of devoting sufficient resources to the project rather than any deliberate attempt to hold onto material (primarily FBI reports) the retention of which is not authorized.

It was made clear to us that no new holdings of extraneous or irrelevant material are being accumulated by the NISO, and the only material surfaced during our spot checks was dated prior to the new policies having been announced. FBI reports now being received are reviewed upon receipt by the security section and if they are of no relevance to Navy functions are disposed of promptly. Items of interest to the Navy are circulated among the staff and when appropriate referred to Washington headquarters.

In considerable contrast to the other two departments, the Army Region headquarters at Fort Sheridan and Field Office in South Chicago have no holdings of any kind relating to non-affiliated organizations or individuals. They have no characterizations of organizations, even officially approved characterizations, at Region and Field Office level. FBI reports and monthly Intelligence Summaries published by Fifth U.S. Army are received, screened, read, and disposed of. A "clean-sweep" of all files appears to have been accomplished and no new ones are being accumulated. In Army units, we detected considerable caution about acquiring any information relating to non-affiliated individuals or groups. As it develops, there are no large concentrations of Army troops in the area since Fort Sheridan is largely in support status for remnants of Fifth Army headquarters, an MP company, and certain small miscellaneous reserve units. There is little evidence of any dissident activity directed against the Army (save for an abortive attempt by a small band of Indians to occupy the post) and hence no apparent need for Army intelligence to become concerned about nonaffiliated groups. We uncovered no indication that, in light of the Region's responsibilities, the lack of files available locally has adversely affected their ability to function properly.

IV. EFFECTIVENESS

All personnel contacted during the inspection were queried whether the new policies had impaired their ability to perform their mission. With the exception of the erroneous impression held by one commander alluded to above, the responses were uniformly in the negative. One NIS analyst remarked that their inability to place sources into certain organizations targeted against the military did curtail their ability to keep tabs on the organization on a first-hand basis. He acknowledged that the FBI furnished considerable information on organizations but also pointed out their priorities and interests were somewhat different from our own. The team discussed the criteria for obtaining DIRC approval for special operations in this context, and in effect encouraged them not to discount or ignore the possibility of seeking DIRC approval if a particular group presents sufficient cause for concern.

V. LIAISON

All units contacted stated that their liaison with other Federal agencies and local police is excellent. The view was expressed that since we were not in a position to furnish any information but only receive ("all take and no give"), this would tend to dry up sources of information. Thus far, however, no one the Team spoke with felt that the sources were drying up. Indeed, they expressed the view that other agencies seemed to understand the position the military investigative agencies are now in and are very sympathetic and continue to be most helpful.

VI. EXIT CRITIQUE

An Exit Critique was held in the Circuit Court of Appeals Chambers, Federal Court House, in downtown Chicago, on May 4, attended by Under Secretary BeLieu, the inspecting team, and representatives from all organizations visited during the preceding three days. General satisfaction over the findings of the team was expressed and the Under Secretary complimented those in attendance for having borne up well during a particularly difficult period of public criticism and misunderstanding. During the question period following the report of the team, the question was raised whether the Delimitations Agreement did not need up-dating. It was noted that the changed role of the Army in civil disturbance collections was covered by a separate exchange of letters between the Under Secretary of the Army and Deputy Attorney General, in which the understanding is made explicit that the Attorney General has the basic responsibility for acquiring and disseminating information relating to civil disturbances. Also, we noted that with the coming on the scene of the DIS it appeared desirable to up-date the Delimitations Agreement inasmuch as the only signatories to it are the FBI, the Army, Navy and Air Force investigative units.

VII. CONCLUSIONS

This fifth unannounced DIRC inspection was conducted among all three military departments in the once-controversial area of Chicago. The team was well received everywhere, met with straight-forward responses to its inquiries, and encountered an earnest attitude of caution, and a strong desire to comply with announced policies. We found full operational compliance with current investigative policies, substantial compliance with retention criteria, although (as noted above) more needs to be done in purging NIS file holdings. Inasmuch as units in the Chicago area are devoted largely to PSI tasks, there is an obvious preoccupation with the impact of the Defense Investigative Service (DIS) on their operations. It is our impression that these developments are awaited with a healthy curiosity and optimism on the part of field investigative personnel.

Respectfully submitted.

ROWLAND A. MORROW,
Director, DIPO.
WERNER E. MICHEL, Col., USA,
Chief, CI and Sec. Div., DIA.
ROBERT L. JONES, Lt. Col., USAF,
Executive Assistant, DIPO.
RONALD J. GREENE,
Asst. to the General Counsel, OSA.

APPROVAL

As the Defense Investigative Review Council principal chartered to conduct this fifth DIRC inspection, I directed the areas to be covered by the Team, participated in the exit critique at Chicago, have discussed the details of the teams' findings with them, and approve this report.

KENNETH E. BELIEU,
Under Secretary of the Army.

INSPECTION REPORT 4

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., April 21, 1972.

MEMORANDUM FOR THE DEFENSE INVESTIGATIVE REVIEW COUNCIL

Subject: Report of Unannounced DIRC Inspection in the San Diego-Los Angeles, California Area.

An unannounced DIRC inspection was conducted in the San Diego—Los Angeles—Vandenberg AFB area, covering investigative units of the Army, Navy, Marine Corps and Air Force, during the period 4–7 April 1972. An unscheduled brief inspection was made of the OSI unit at Scott AFB, Illinois, when the Secretarial party was weathered-in enroute back to Washington. The inspection was conducted pursuant to Section IV.B., IVE., V.A.3., and V.B.2.(2) of DoD Directive 5200.26, dated February 17, 1971. The inspecting party consisted of the following:

Honorable John W. Warner, Under Secretary of the Navy, DIRC Principal and Senior Inspector

Rowland A. Morrow, Director, Defense Investigative Program Office and Chairman, DIRC Working Group.

Colonel Werner E. Michel, Chief, Counterintelligence and Security Division, Defense Intelligency Agency, and Member, DIRC Working Group

Lt. Colonel Robert L. Jones, Executive Assistant, Defense Investigative Program Office

Mr. Harry B. Warren, Operations, Plans and Programs Division, Naval Investigative Service Headquarters

An exit critique of the inspection was held on April 7, 1972, at Vandenberg Air Force Base, California, attended by the inspection Party, the Special Counsel to the Secretary of the Navy, and representatives of all organizations contacted during the preceding three days. Lists of all persons and units contacted and attendees at the exit critique are attached at TABS "A" and "B."

I. EXECUTIVE SUMMARY

The initial stop of this inspection—in San Diego—focused primarily upon liaison activities with local agencies engaged in preconvention planning. Navy and Air Force units continue to attend Law Enforcement Task Force meetings in San Diego in an observer capacity, but Army units have discontinued their attendance in order to avoid any appearance of civil disturbance collection activity. Everywhere, in Naval Investigative Service, Air Force OSI, the Marine Corps Counterintelligence Team, and Army Intelligence, we found a clear awareness and strict compliance with DIRC policies. As found in prior inspections, the application of criteria for retention of information relating to civilian organizations varied somewhat from Service to Service but we found no clear violations of the new policies. Operationally, all units evidenced a diligent desire to comply strictly with their departmental regulations implementing DoD Directive 5200.27. There are indicators that dissident groups in San Diego will intensify their activities in the next few months, in connection with announced intentions to disrupt the political convention there in August. Navy units in San Diego are alert to the possibility of incidents directed against Naval installations or personnel designed to embarras the "Establishment."

II. PRE-CONVENTION PLANNING IN SAN DIEGO

As noted above, San Diego is experiencing a "heating-up" situation, with the influx of diverse groups who wish to disrupt the convention, embarrass the administration and the Establishment generally. The large number of military bases, principally Navy, in the area, are a logical target for demonstrations, acts of "non-violence," and exploitation of any kind of grievance, real or manufactured, for the benefit of the media. A Law Enforcement Task Force planning for the Convention has been holding sessions monthly since last October and will meet more frequently as the Convention date in August approaches. The NIS expressed some misgiving that the number of anti-military organizations known to be congregating in the area will exceed the ability of local and Federal agencies to monitor adequately. Navy is especially concerned because of the large number of Naval facilities in the immediate area which present targets of opportunity for dissident groups. Being well-informed is thought to be essential to squelch rumors, and react intelligently to threats to military property, personnel and functions.

For these reasons, both Navy NIS and Air Force OSI continue to attend Convention task force meetings in a passive role, limited to (1) observing, (2) accepting no tasking, and (3) furnishing information only when it originates with military sources. Army has received instructions from Washington not to engage in any civil disturbance collection or liaison activities on matters dealing with potential civil disturbances until ordered to do so from Washington.

Their potential civil disturbance role and the lack of any major Army installations in the area is thought to place them in a different position than that of the other two departments.

None of the military units have yet to be advised of the extent to which they will be tasked to give aid to the Secret Service for DVP and related duties at the Convention, but they anticipate the initial requests will be made to the OSD, and passed on from Washington headquarters.

III. AWARENESS AND COMPLIANCE WITH DIRC POLICIES

Whereas the inspecting team's focus of attention in San Diego was directed primarily toward liaison activities, the remainder of the trip was devoted to assessing the awareness, compliance, impact, and any problem areas in investigative units in the lower California area.

The major OSI District headquarters at Norton Air Force Base experienced very small impact with the innovation of the new investigative policies, because of limitations previously placed on their activities. On examining files in OSI District Headquarters, we noted that their characterizations of organization files contained several summaries of information taken from FBI reports on organizations which did not seem to have any relevance to DoD functions, and moreover were outdated. They readily agreed to screen that file more carefully and dispose of any extraneous material.

We also found a file in the District OSI Headquarters labelled "GOP Convention" which contained a group of FBI and local police reports relating to dissident groups which intend to create incidents to disrupt the 1972 Convention in San Diego. The file contains information on a number of non-DoD affiliated organizations and individuals. The OSI explained it was keeping this file temporarily for use when their agents are tasked to provide Secret Service assistance at the Convention, for the purpose of briefing their agents. After the convention, they plan to destroy the entire file. By the time the conventions roll around, some of the information in the file will be more than 90 days old. Although the motive for keeping the file seems innocent enough, and it contained no DoD generated material, it could be a potential source of criticism.

The Army Region headquarters in Pasadena whose mission is almost exclusively PSI, had a file of characterizations of organizations which had been prepared by Army Intelligence (ACSI) which appeared to be up-to-date and represent only "threat-type" data. For example, their characterizations included summaries on the Progressive Labor Party, the Movement for a Democratic Military, Concerned Officers Movement, but the list did not include any information on the Revolution Union (a Maoist, militantly anti-US, anti-military, revolutionary group). The Army Intelligence Los Angeles Field Office, which is colocated with Region Headquarters in Pasadena was unaware that Region had a file of organizational characterizations.

The Naval Investigative Service Resident Agency at El Toro Marine Corps Air Station conducts liaison with FBI and receives information regarding local groups, but it screens it promptly and disposes of any information which is not thought to represent a threat to the military establishment. The Marine Corps Counterintelligence team, attached to the Air Wing at El Toro, evidenced acute awareness of DIRC directives, expressed some puzzlement over the low-key approach of the inspecting party. Apparently, advance billing about the DIRC had projected a somewhat ominous picture of an up-against-the-wall shake-down inspection. The NIS has investigative support for Marine Corps units, and the Counterintelligence units attached to Marine Corps tactical units do not have any investigation functions off-base. Nevertheless, the degree of awareness of DIRC policies among Marine Corps personnel was impressive. This was the first Marine Corps unit visited during the Unannounced DIRC Inspections and it was gratifying to learn that the fame of the DIRC, although somewhat ominously portrayed, had preceded us.

IV. LIAISON

In all units visited, we received favorable responses to our inquiries about the quality of liaison with local authorities and other Federal agencies. No difficulties were experienced in obtaining information from the FBI on domestic organizations, and all persons queried felt their liaison was excellent to superior. In two isolated locations, (Santa Monica and Long Beach) the local Police chiefs were sticky about letting our agents check police records during

PSI's; Long Beach will only check their records if we have an FBI rap-sheet arrest number of a reported arrest. In Santa Monica, the local police will not verify a listed arrest; consequently, our investigators must resort to checking the Court records to determine the details of criminal records. Other than these isolated instances, local liaison is felt to be excellent.

V. EFFECTIVENESS

At all levels, both command and among investigative personnel, the inspecting team inquired whether the new policies had impaired their ability to perform assigned missions. We received uniformly negative answers, except for the misgiving expressed by the Navy that the coming summer in San Diego may possibly require some exceptional actions to cope with the special challenges presented by the Convention influx of dissident groups.

A fairly detailed discussion was held with the NISO commander on the subject of special operations, and it is felt that they are adequately aware of the potential for flexible response, of seeking DIRC approval of special operations, and the conditions under which such operations might win approval. It should be emphasized that whatever misgiving was expressed is about prospective events and do not reflect past experience.

Judging from the wealth of knowledge exhibited by the NISO commander and his staff about anti-military organizations such as the Center for Servicemen's Rights (CSR), Movement for a Democratic Military (MDM), Concerned Officer's Movement (COM), Vietnam Veterans Against the War, Pacific Counseling Service (PCS), and the Stop Our Ship (SOS) movement, it was obvious that the new investigative policies had not created any paucity of information of interest to security personnel. MDM activities in the San Diego and El Toro area seem to have dried up in recent months. There are no GI coffee houses giving command special problems at present. Underground newspapers have appeared in El Toro and San Diego in the past (as recently as January 1972), and may reappear, but the local investigative units feel no constraints about acquiring and retaining data of this type when it is obviously targeted against the military, provided it can be obtained overtly or via liaison without resort to covert operations.

VI. DEFENSE INVESTIGATIVE SERVICE (DIS)

There were considerable curiosity about the impact the newly-established DIS will have on investigative units in the San Diego-Los Angeles area. The Team dealt with this subject in generalities, inasmuch as many of the decisions as to consolidating facilities and staffs have yet to be made by the Director, DIS. It was obvious, however, that both Army and Air Force which have large PSI missions in the metropolitan area of Los Angeles, undoubtedly will be affected significantly by the formation of the DIS.

VII. SPECIAL ISSUE—RESERVE POLICE UNIT, SAN DIEGO

In discussing the case of a Navy enlisted man in San Diego who the Senate Internal Security Committee expressed a desire to use as a witness regarding left-wing anti-military groups in the San Diego area, it was revealed that the man involved is also a member of a San Diego Police Reserve unit. It was learned there are 72 members of this reserve police unit who are also members on active duty with the military (71 Navy, 1 Air Force). The men receive no pay, but have uniforms and engage in training drills, and could be called to duty in the event of civil strife requiring supplements to the regular police force. The team expressed strong doubts that active duty personnel engaging in this kind of "civic duty" is consistent with conflict of interest directives. There also appears to be a clear posse comitatus (18 U.S.C. 1385) issue, notwithstanding the technical point that posse comitatus applies to the Army and Air Force (no mention being made of Navy and Marine Corps). The team believes this issue should be referred to Navy JAG for resolution.

VIII. EXIT CRITIQUE

The exit critique at Vandenberg Air Force Base was attended by representatives from the four Services visited during the preceding three days. Secretary Warner urged all attendees to voice any problems, so that the DIRC can continue as a dynamic organization responding to the needs of operational personnel. With the exception of the San Diego potential referred to above, no attendees expressed dissatisfaction with the new investigative policies.

IX. SCOTT AIR FORCE BASE, ILLINOIS

An unscheduled, unannounced DIRC inspection was conducted at Scott Air Force Base on April 8, 1972, when the Secretarial party was required by weather conditions in Washington to stop-over near St. Louis. Colonel Michel and Captain Gardiner Haight, U.S. Navy, who accompanied the Under Secretary of the Navy, met early Saturday morning with three surprised OSI agents at Scott. They reacted numbly to mention of the Defense Investigative Review Council but brightened when the acronym "DIRC" was mentioned. Although no inspection of their files was conducted, the OSI representatives responded affirmatively to inquiries about AFR 124–13, evidenced good familiarity with its provisions, and reported no special problems. Scott AFB has experienced no underground newspapers, GI coffee houses, nor radical dissent activities, although the usual amount of racial problems have not escaped them.

X. CONCLUSIONS

The unannounced inspection commenced in San Diego, with the Navy receiving one-half hour advance notice "via liaison" that the team was enroute. The second day in Los Angeles (San Bernadino) appeared to be a complete surprise to the OSI and subsequent surprise visits to Army, NIS and Marine Corps units showed a lessening of the efficacy of "liaison." Nevertheless, a spirit of instant cooperation and candor was experienced. Because of the obvious keen awareness with the now-year-old policies, and a strong desire to comply, the emphasis was more in the nature of a staff-visit than a shakedown type of inspection. The Team is satisfied that the policies are understood and that there is a good faith effort to comply rigorously with their terms. The Team discussed the potentials for special operations if special circumstances warrant DIRC approval, noted a healthy, positive response, and concluded that visits of this type are mutually beneficial.

Respectfully submitted.

Rowland A. Morrow,
Director, DIPO.
Werner E. Michel, Col, USA,
Chief, CI and Sec. Div., DIA.
Robert L. Jones, Lt. Col., USAF,
Executive Assistant, DIPO.
Harry B. Warren,
Operations, Plans and Programs, NIS Hqs.

APPROVAL

As the Defense Investigative Review Council principal chartered to conduct this fourth DIRC inspection, I directed the areas to be covered by the Team, participated in the exit critique at Vandenberg Air Force Base, have discussed the details of the teams' findings with them, and approve this report.

John W. Warner,
Under Secretary of the Navy.

INSPECTION REPORT 3

Office of the Assistant Secretary of Defense,
Washington, D.C., March 21, 1972.

Memorandum for the Defense Investigative Review Council

Subject: Report of Unannounced DIRC Inspection in the Central Florida Area.

An unannounced DIRC inspection was conducted in the Cocoa Beach—Orlando—Tampa area, covering investigative units of all three military departments, on March 13, 14, 15 and 16, 1972. This inspection was conducted in accordance with Sections IV.B., IV.E., V.A.3., and V.B.2.(2) of DoD Directive

5200.26, dated February 17, 1971. The inspecting party consisted of the following:

Hon. John L. McLucas, Under Secretary of the Air Force, DIRC principal and Senior Inspector

Mr. Bert Z. Goodwin, Assistant General Counsel, Department of the Air Force and Member, DIRC Working Group

Mr. Rowland A. Morrow, Director, Defense Investigative Program Office and Chairman of DIRC Working Group

Mr. James E. Stilwell, Deputy Chief, Counterintelligence and Security Division, Defense Intelligence Agency and Alternate Member, DIRC Working Group

Lt. Colonel Robert L. Jones, Executive Assistant, Defense Investigative Program Office

An exit critique of the inspection was held on March 16, 1972, at McDill Air Force Base, attended by the Inspection Party and representatives of all organizations contacted during the preceding three days. Lists of all persons and units contacted and attendees at the Exit Critique are attached as Attachments "A" and "B."

I. EXECUTIVE SUMMARY

Although visits by the Inspecting Team were focused primarily upon investigative units of all three military departments, meetings were held also with command echelons at Air Force bases visited. Without exception, the Inspecting Team found full awareness and strict compliance with the terms of present investigative policies. We found no substantial problems connected directly with the changes in policy. DIRC Retention criteria appears to be applied differently among the Services, but no clear violations were noted. From the point of view of finding anything "wrong" the team went to the wrong place. The Central Florida area represents a reliatively quiescent atmosphere from the points of view of dissidence, anti-military sentiments or civil disturbance activity. The benign domestic scene in that locale alone seems to account for the lack of any problems and minimal impact of DIRC policies found during this inspection.

II. AWARENESS AND COMPLIANCE

Without exception, visits to investigative units of Air Force, Navy and Army impressed the Inspectors with the central fact that great efforts had been made to impress everyone in the investigative business with the changes in policy flowing from DoD Directives 5200.26 and 27. Full access to files was given to members of the Team, so that judgments could be made regarding compliance with operational and document retention criteria. Without exception, we found full compliance with the policies contained in the DoD and Service implementing instructions.

Differences in implementing retention criteria were noted in the matter of "characterizations" of organizations. In Army Intelligence units, there was no local file of characterizations of organizations, except for the Attorney General's List. In Naval Investigative Service Resident Offices we found a file of official Department of the Navy characterizations or organizations of security interest, mainly so-called "New Left" organizations. The Army explanation was that if they need a characterization in a particular case, there is a procedure for obtaining it thru channels and via liaison from other Federal agencies. We were struck with the paucity of files of any kind in Field Office and Resident Agency levels. Even at the District OSI office (with jurisdiction over the whole of Florida) there was a minimum of files, and no massive purging of old files had been necessary because of spare collections activity in the past. What was retained appeared entirely within approved retention criteria.

III. IMPACT

As anticipated, the major impact of the new investigative guidelines announced in DoD Directive 5200.27, was felt in Army intelligence units. Domestic surveillance activities required by prior directives had been discontinued drastically as a result of earlier Army directives, prior to the receipt of the Army's implementing instruction of June 1, 1971. Records had been purged, and stringent measures taken to ensure that all personnel were personally acquainted with the new policies. Army investigative personnel have been required to certify they have "read, understand, and will comply" with the new instruction of June 1, 1971. It is the Inspecting Team's impression that Army Intelligence is proceeding today with extreme caution so as to avoid any criticism. The Navy and Air Force units, on the contrary, have not experienced the sharp kind of reversals of role and therefore have not felt the impact of the changes to the same degree. Several questions asked at the Exit Critique by Army Intelligence personnel exemplify their caution, their grave concern and obvious desire to serve with honor. They were:

> Is it permissible to attend liaison meetings with local police when it is predictable that such things as disturbances in the local community might arise in the conversation? (Answered "yes" so long as no records of civil disturbance data are made, acquired, indexed, assembled or computerized as a result of these normal business contacts.)
>
> What is being done to restore the reputation of military investigators so that they will not always be regarded as the bad guys? (The latter question was answered with considerable philosophizing.)

Another important factor pointing to the small if not insignificant impact of the new policies on investigative units in the Central Florida area is the noteworthy absence of dissidence, civil disturbances, anti-war or anti-military sentiments in the areas visited. With the exception of McDill Air Force Base, Tampa, there are no so-called underground newspapers in the area. There is no discernible anti-military protest activity targeted against military bases in the area and no GI Coffee Houses. The underground newspaper at McDill, entitled the "McDill Free Press," has appeared twice, the last issue appearing in early January 1972. It has caused little concern, is low-key in comparison with others we have seen, and was prudently shrugged-off by local command without focusing attention to it.

We probed to ascertain whether our investigative units possibly were uninformed on the subjects of dissidence and related anti-military activity in the area, but we were reassured by everyone that their contacts with others in the intelligence/security/law enforcement community were sufficient to give them a feel for what was going on, and they felt they had accurate assessments of the situation. Relative apathy on the campuses, conservative politics, and a salubrious climate combine to produce an unlikely hot-spot for DIRC concern.

IV. LIAISON

At all units visited, the Team stressed the quality of liaison with local police, other Federal agencies, and sister services. We found an active program of bimonthly get-togethers among the military investigative units, FBI, and local law enforcement agencies. Also, all persons contacted reported that there is a good flow of information from the FBI. The only substantial change from prior practices is the degree to which information received from the FBI is recorded and retained. Associated agencies seems to understand the new constraints on collections activity and have kept up friendly contacts nonetheless.

One problem encountered in the area of liaison is not DIRC related but may become important from the point of view of effective PSI performance. This problem centered upon a Florida State Commissioner for Investigations interpretation of whether the OSI and Army Intelligence are "law enforcement" agencies within the meaning of the regulations for obtaining computerized data from the National Crime Information Center. By extension, they were denying OSI and Army Intelligence access to local sheriff office records because DoD agencies would not fit their definition of "law enforcement agencies." This interpretation has been protested by both Air Force and Army, and some modification has been obtained. However, it was thought that this kind of ambiguity might become a source of inhibition or denial of information in other locales in the United States. The Team agreed to address the problem upon return to Washington, and it will be handled independently of DIRC concerns.

V. EFFECTIVENESS

Everywhere we went, the Team questioned both command and investigative personnel whether the new investigative guidelines, prohibitions and inhibitions, had impaired their ability to do their job. Without exception, we received negative answers to this inquiry. Taking the question one step further, we inquired if there was anything they felt they ought to be doing in the investigative field but which the new policies prohibited; again we received negative responses. One agent picked up the question later by observing that he wished there was more latitude for the field agent to use his own judgment and initiative rather than having to check out everything with his superior. This agent came from a unit wherein we had previously noted an attitude of extreme caution—the Army. The symptoms of "snake-bite" noted on previous inspections are still evident.

VI. TRAINING

Units visited were generally satisfied with the training of agent personnel. Army investigators remarked on the need for extensive on-the-job training of new agents on report writing and the nitty-gritty of running PSI's in a metropolitan area. For example, one agent remarked that despite an extended course at the Army Intelligence School, he had never heard of the Polk's Directory of Names and Street Addresses until assigned to a Field office. Schooling might have covered this kind of very practical aspect of tracking down references, etc., which make up such a large portion of the PSI mission.

VII. SECRET SERVICE AUGMENTATION

Although investigative units in Florida anticipate they may be tasked to assist the Secret Service in the forthcoming Presidential convention in Miami, they had not yet received any official word as to when, how many, or other details. They were informed of some of the DIRC suggestions for low-profiling military units during the political conventions.

VIII. DEFENSE INVESTIGATIVE SERVICE (DIS)

There is great curiosity among investigative personnel at all units visited about the DIS. The Team furnished general information to these personnel but were unable to inform them of precisely how the new organization would affect them in their particular organization, for the reason that many such decisions have yet to be made. Our impression was that they are waiting expectantly but without undue anxiety for developments.

IX. CONCLUSIONS

The inspection was begun unannounced and was conducted in an atmosphere of cooperation and candor. We found acute awareness of the new policies and strict compliance therewith in an atmosphere of negligible civil agitation or turmoil. Investigative activities in the Central Florida area are devoted predominantly to Personnel Security Investigations, but with a rising case load *on base* of drug-related criminal cases. Given the benign domestic situation in the area visited, it is no surprise the inspection developed no surprises.

Respectfully submitted.

BERT Z. GOODWIN,
Asst. General Counsel, Dept. of AF.
ROWLAND A. MORROW,
Director, DIPO.
JAMES E. STILWELL,
Deputy Chief, CI & S Div., DIA.
ROBERT L. JONES, Lt. Col., USAF,
Executive Asst., DIPO.

APPROVAL

As the Defense Investigative Review Council principal chartered to conduct this third DIRC inspection, I directed the areas to be covered by the Team, participated in the exit critique at McDill Air Force Base, Tampa, Florida, have discussed the details of this report with the Inspection Team, and have approved their findings.

JOHN L. MCLUCAS,
Under Secretary of the Air Force.

INSPECTION REPORT 2

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington D.C., November 1, 1971.

MEMORANDUM FOR THE DEFENSE INVESTIGATIVE REVIEW COUNCIL

Subject: Report of Unannounced DIRC Inspection in the Seattle-Tacoma, Washington Area.

An unannounced DIRC inspection was conducted in the Puget Sound area of investigative units of all three military departments on October 20, 21 and 22, 1971. This inspection was conducted in accordance with Section IV.B., IV.E., V.A.3., and V.B.2.(2) of DoD Directive 5200.26, dated February 17, 1971. The inspection party consisted of the following:

Hon. J. Fred Buzhardt, General Counsel. Department of Defense, DIRC principal and Senior Inspector

Mr. Robert T. Andrews, Deputy Assistant General Counsel, Department of Defense

Mr. Rowland A. Morrow, Director, Defense Investigative Program Office and Chairman of DIRC Working Group

Mr. B. L. Willard, Executive Assistant to the Director, Naval Investigative Service, Department of the Navy, and member, DIRC Working Group

Lt. Colonel Robert L. Jones, USAF, Military Assistant, Defense Investigative Program Office, OSD

An exit critique of the inspection was held on October 22, 1971, at McChord. Air Force Base, attended by the Inspection Party and representatives of all organizations contacted during the preceding two days. A full list of all persons and units contacted during the inspection is appended as Attachment A. A list of persons who attended and participated in the Exit Critique is appended as Attachment B.

I. GENERAL

The inspection was focused upon the areas of concern outlined in the DIRC Inspection Techniques Study. This report is divided into sections corresponding with the several issues addresed by the Inspecting Team, namely (1) Awareness of DIRC Policies, (2) Compliance, (3) Impact, (4) Liaison, (5) Training and (6) Effectiveness. The Inspecting Team met with excellent cooperation at all units and levels visited, received candid and straightforward answers to its inquiries, and is satisfied that its inspection was conducted in an atmosphere of mutual trust and objectivity.

Although the primary thrust of our inspection was aimed at investigative units and personnel, the Inspection Party talked with base commanders at all installation visited, and made contact with post security officers, the base JAG officer, and the commander and S–2 of a tactical Army unit with a potential civil disturbance mission. The inspection afforded a valuable across-the-board view of all three military departments in a geographic area not previously visited by a DIRC principal, and permitted some comparative analysis of how well the directives have been understood and implemented.

In general summation, the Inspecting Team found *full awareness* of the new policies both investigative and command and staff personnel of all three Services; *strict compliance* with the policy on collection of information on persons not affiliated with the Department of Defense. *Retention criteria* have not yet been implemented uniformly in all three Services; and, as expected, the impact of the new policies varied considerably among the three Services. A full development of these findings is presented under separate headings below.

II. AWARENESS

Among investigative personnel—the professionals—we found an acute awareness of the Department of Defense and individual Service instructions implementing DIRC policies on acquisition of information concerning persons and organizations not affiliated with the Department of Defense. Without exception, all personnel from command and staff officers to the agent on the street, evidenced full awareness of the boundaries of permissible investigative activity. Army and Air Force units have required their personnel to sign certificates to the effect they have read and understand and will comply with the directives.

The Naval Investigative Service has had an intensive campaign to bring the directives to the attention of investigators as well as command and staff personnel. The installations and base commanders visited by the Team all were aware of their respective Service instructions on the subject, and the general problem of alleged "spying on civilians" which precipitated the issue. The Team noted that commanders as well as investigators are amply aware of the new constraints on investigations.

III. COMPLIANCE

Again without exception, the Team found strict compliance with the operational guidelines of the various Service instructions implementing DoD Directives 5200.26 and 5200.27. We noted that there is apparently some ambiguity over the permissible investigative jurisdiction in threat-type situations and consequently investigative personnel are proceeding with considerable caution. For example, there seemed to be some doubt whether the Army Intelligence would be justified in asking the local FBI whether they had any information on a local GI Coffee House. The GI Coffee House was off-base in the local community, was a gathering place for military personnel, and was thought to be fomenting anti-war propaganda. The local commander at Fort Lewis has strictly forbidden Army investigations off-base, and the local Military Intelligence unit commander was loath to solicit data on the coffee house from other agencies who may or may not have information. The Team assured those concerned that there was certainly no prohibition to receiving any information from the FBI, evaluating whether it constituted information within the threat categories authorized in Section IV of DoD Directive 5200.27, and thereafter deciding whether it warranted retention or should be discarded. It was well understood, however, that the Army should not attempt to send its own agents into the coffee houses, either overtly or covertly, without soliciting and receiving approval in accordance with the directives.

The only discrepancy observed in compliance with the DIRC directives was in the area of retention of files. Operationally, everyone is complying with the new policies on running investigations. The variations observed occurred in the area of implementation of the retention criteria, and marked differences among the three Services were observed.

The Army, which had previously received the brunt of criticism, has completed the most intensive and comprehensive purging of files, so that they have virtually no files at all, except for those on assigned military and DA civilian personnel. This is true at both Ft. Lewis and Ft. Lawton. In case of doubt, the rule was to get rid of it. Compliance with retention criteria within the Army installations in this area has been total and complete. The 3rd Cavalry Regiment has no intelligence holdings, primarily because their potential civil disturbance mission contemplates they might go to any area in the United States and not to any particular target city. Thus, if they wanted to collect domestic intelligence type information, they would not know in advance what city on which to collect. Notwithstanding, the Commanding Officer of the 3rd Armored Cavalry was aware of the constraints in this area and did not feel handicapped by them.

The Navy, since the issuance of the Service implementing instructions in June 1971, has had a phased purging campaign underway, which they estimate is 75% complete in the Seattle NISO office. We were informed that the Resident Agents in the environs did not have any files except for working folders on pending PSI cases. A random checking of the files of NISO Seattle revealed some files the retention of which cannot be justified under retention criteria, and each one noted by the inspection team was a file which had not yet been screened or purged in their systematic screening program. Obviously, more needs to be done in this regard and they are aware of this fact, but explained that they did not feel they should drop everything to accomplish the screening. Each time a file is pulled, however, for some operational purpose, the contents are screened and a determination made whether it meets the DIRC retention criteria. If not, it and the related index card, is destroyed. Purging thus far had resulted in an estimated 20–25% reduction in the volume of holdings in the NISO Seattle office.

In Air Force, the purging process of organizational and personality files has not yet gotten underway in District 20 headquarters at McChord Air Force

Base nor in the OSI Detachment 2004 in Seattle. An examination of these files revealed both "threat-type" information the retention of which is justified and other information on civilian organizations which would not fall within that category and should be purged. It was explained that the District momentarily was expecting instructions from OSI Headquarters in Washington which would give management guidance on disposition schedules of this kind of material, at which time they expected to comply promptly. The local OSI commander was obviously concerned that they had not yet complied and had discussed the matter with headquarters quite recently and was assured that management guidance on disposition techniques to be followed by all personnel was forthcoming. (This fact has been verified independently from OSI headquarters, and instructions to field installations are to be issued imminently.)

IV. IMPACT

As expected, the impact of the DIRC directed policies has been greatest on the U.S. Army because this Service had previously been tasked with civil disturbance collection missions. The change in policy in this area also had been directed from Department of Army level starting in December 1970, so that a head-start, so to speak, in compliance had been experienced. Moreover, periodic internal inspections by the Army Task Force and ACSI IG's had done considerable to drive home the point that the change in policy and mission was a profound one and not just surface emphasis.

This is not to say that the impact on Air Force and Navy units was negligible, but it was considerably less because Air Force and Navy had not been tasked with a civil disturbance collection mission. They did, however, collect considerable information on civilian personalities for general information and training purposes, and to be able to keep commanders advised of the general internal security situation. The latter information was received primarily through liaison with the FBI and other agencies.

Thus, the primary impact upon Navy and Air Force of the new guidelines has been in the area of retention of information. Prior to 1971, there was little or no conscious screening of information to ascertain its relevance to the Service mission—i.e. whether it related to the protection of DoD functions or property—and most everything received previously was carded, indexed and retained in organizational and personality files. Today, there is a conscious effort in all three Services to apply the DIRC retention criteria to new material received and to dispose of materials not of relevance to DoD missions.

As indicated under the Compliance Section above, the purging of old files among the several Services is in various stages of completion, with the Army having accomplished a most thorough housecleaning. Our impression is that in the Army no risk was taken in applying the retention criteria, and the rule of "if in doubt, throw it out" resulted in some over-compliance with the basic DIRC directives. Also, an atmosphere of extreme caution in doing any kind of investigative activity off-post, even on military subjects, was observed. In response to our inquiry, the local Army MI unit has no thoughts of initiating requests for DIRC approval for covert operations. Even on-post offensive counterintelligence operations have been discontinued. Thus, 90% of Army investigative resources go into the PSI mission, with the balance applied to security and technical surveys and inspections.

V. TRAINING

All investigative commanders expressed satisfaction with the training of agents assigned to them. The Air Force noted that they had just received a new ROTC lieutenant who had no intelligence/investigative training, but that he was awaiting clearance so he could attend the OSI school in Washington. In the meantime, he was not being utilized on case work and was undergoing a general orientation within the unit. Over-all, however, training of agents does not appear to be a problem. Army investigative personnel at the field agent level are primarily 3-year (draft-motivated) enlistees who are well qualified and trained for the PSI tasks, but there is the constant problem, observed elsewhere in DIRC inspections, that these enlistees will not re-enlist, and a high turnover of personnel is endemic to the system. Thus, it appears that the Army has not yet been able to implement DIRC Study No. 6, which requires among other things, that enlisted agents shall have completed two years active duty prior to applying for agent status.

VI. LIAISON

All units visited believed that their liaison with Federal and local officials as well as with other investigative services was good, but not always sufficient. For example, the FBI (which does have latitude to investigate in the civilian community) may assign a very low priority to gathering information on GI coffee houses. If the FBI or local police are indifferent to such targets, there will be no coverage at all on such activities which may legitimately present a nagging source of apprehension for local commanders. The NISO commander noted that other agencies seem to appreciate that there has been a change in the areas in which the military can be interested, but they remain sympathetic and helpful. As noted above, we found some ambiguity among Army personnel whether it would be permissible to request information from the FBI on GI coffee houses in the environs of a military base, and the local MI commander insisted that the Post Intelligence Officer make any request for such data in writing. The latter, we believe, is a symptom of the caution which permeates the Army approach to any investigative/collection which goes beyond the gates of the post. Liaison in connection with criminal investigations and the PSI mission is unaffected by new policies and remains excellent.

VII. EFFECTIVENESS

At each post, unit and office visited, the Inspection Team inquired whether the new policies as implemented by the individual Services "had impaired their ability to accomplish their assigned mission?" Without exception, we received a negative response. Frequently, a qualification was added that they no longer had information about civilian personalities or groups which previously had proved useful. For example, if an inquiry or invitation for the Commanding General to speak, etc. was received, this information could serve as a guidepost for the staff to advise command how to react. However, the persons we spoke with admitted that this kind of information was more in the nature of "nice to have" rather than "need to have." Nevertheless, the extreme caution, particularly among Army investigative personnel, may require some balance to avoid over-reaction to the new constraints and to prevent stagnation in pursuing legitimate investigations.

VIII. CONCLUSIONS

The inspection was begun unannounced, and was conducted in an atmosphere of cooperation, mutual trust and candor. The Inspection Team found an acute awareness of the DIRC directed policies, and total operational compliance with the terms of the Service implementing instructions. Differences in the implementation of retention criteria among the three military Services were noted, but over-all the intent was clearly to complete the job of purging old files as soon as time and available resources permitted, and to avoid retaining irrelevant material.

Although the attitudes of negativism which were so pronounced during the first unannounced inspection at First U.S. Army were not as obvious during our visits to Fort Lawton and Fort Lewis, Washington, considerable caution in taking any action in any way impacting upon the civilian community was noted. The latter cautious approach was most pronounced among Army units and to a lesser extent among Navy and Air Force units. From these impressions, it appears probable that the trauma felt over the wide-spread allegations of "Army spying" will be with them for some time to come.

Respectfully submitted.

ROWLAND A. MORROW,
Director, DIPO.
B. L. WILLARD,
Executive Assistant to the Director,
NIS, Department of the Navy.
ROBERT L. JONES,
Lt. Col., USAF,
Military Assistant, DIPO.

APPROVAL

As the Defense Investigative Review Council principal chartered to conduct this second DIRC inspection, I directed the areas to be covered by the Team, participated in the exit critique at McChord Air Force Base, Washington, have discussed the details of this report with the Inspection Team, and have approved their findings.

J. FRED BUZHARDT,
General Counsel, DoD.

INSPECTION REPORT 1

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., September 10, 1971.

MEMORANDUM FOR THE DEFENSE INVESTIGATIVE REVIEW COUNCIL

Subject: Unannounced DIRC Inspection of First U.S. Army Headquarters and Units in Vicinity of Fort George G. Meade, Maryland.

Submitted herewith is the report of the Inspection Team chartered by the Defense Investigative Review Council (DIRC) to conduct an unannounced inspection of First U.S. Army Headquarters and units in the environs of Fort George G. Meade, Maryland. The inspection was conducted in accordance with the provisions of Sections IV.B. IV.E. V.A.3. and V.B.2. of Department of Defense Directive 5200.26, dated February 17, 1971. The Inspection Party consisted of the following:

Mr. D. O. Cooke, Acting Assistant Secretary of Defense (Administration), DIRC principal and Senior Inspector

Mr. Rowland A. Morrow, Director, Defense Investigative Program Office and Chairman of DIRC Working Group

Mr. W. Donald Stewart, Chief of Investigation Division, DIPO, OASD(A)

Lt. Colonel William M. Mann. Jr., OACSI, Department of the Army

The inspection was conducted on August 25, 26 and 27, 1971. An exit critique was conducted at Headquarters First U.S. Army at 1400 hours on August 27, 1971, attended by the Commanding General, Deputy Commanding General and general staff members of the First U.S. Army; The Deputy Commander of the United States Army Intelligence Command (USAINTC); The Commanding Officer, 109th Military Intelligence Group, and representative staff members of all post sections and units visited by the inspection team. A list of dates, units and personnel visited is appended hereto as Attachment #1.

I. GENERAL

The focus of the inspection was directed toward satisfying the areas of interest set forth in the DIRC Inspection Techniques Study. This report is divided into several sections, dealing with the following subjects: (1) Awareness of DIRC policies, as implemented by Service concerned; (2) Compliance; (3) Impact; (4) Liaison; (5) Effectiveness, training of personnel, and special problems. The Inspection Team met with excellent cooperation at every level visited, received candid and straightforward answers to its inquiries, and is satisfied that its inspection was conducted in an atmosphere of mutual trust and objectivity.

In general summation, the Inspection Team found an *acute awareness* of the new policies on acquisition of information concerning persons and organizations not affiliated with the Department of Defense, *strict compliance* with its terms, and a somewhat *mixed impact* on the Intelligence community within the area. A fuller development of these findings is presented under separate headings below.

II. AWARENESS

At every level, from the Commanding General of First U.S. Army, down to unit S–2's, and within the 109th MI Group from the Commanding Officer to the agent on the street, the Inspection Team found a keen awareness of the provisions of the Department of the Army implementing instruction, dated June 1, 1971, subject: Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense. Earlier internal inspections, both Command and Inspector General, assisted in successfully bringing the instruction to everyone's attention. Within the 109th MI Group, at Headquarters, at Region, and at the Baltimore Field Office, all personnel had been required to execute a certificate, on file at Group Headquarters, affirming that they had "read, understand, and will comply" with the directive. An identical certificate was required by the Commanding Office, 6th Military Intelligence Company on his own initiative, although not required by his higher headquarters. It was clearly apparent at every level that there had been an intensive campaign to acquaint everyone with the provisions of the instruction, and this was as apparent in talking with Command, IG and Provost Marshal personnel as it was in the Intelligence community.

III. COMPLIANCE

Again, without exception, the Inspection Team found strict compliance with the terms of the Army implementing instruction. An internal inspection by an ACSI Inspector General team in February of 1971 had left no doubt in anyone's mind that the predecessor instruction (issued by the Department of the Army on June 9, 1970), which contained most of the current limitations and constraints on the acquisition of information concerning non-affiliated civilians or organizations, meant exactly what it said.

In the Current Intelligence Branch, Plans, Operations and Training Division, of the Deputy Chief of Staff for Intelligence, Headquarters First U.S. Army, the Inspection Team found the Domestic Intelligence holdings had been reduced from 30 file cabinets to 3 drawers in one file cabinet. More exactly, as of April 23, 1970, organizational and personality folders, 5x8 cards, and publications, filled 154 linear feet of files. As of August 25, 1971, the same kinds of files consisted of five (5) linear feet. Examination of these remaining files revealed they relate to persons on active duty in the Army within the area, and organizations deemed by the local command to constitute a threat against Army personnel, activities or installations. Examination of a random sampling of City Packets prepared for use in Civil Disturbance planning revealed that names of personalities and organizations have been deleted from the five-year history of civil disturbance information contained in the City Packets. Data contained in the five-year summary of civil disturbance incidents is obtained principally from State Adjutants General and *not* via intelligence agent collection means.

We found *no* files, data or other holdings relating to non-affiliated organization or individuals below First U.S. Army Headquarters. The 109th MI Group had disposed of all files on domestic organizations and individuals, and are acquiring none. They even interpret the constraints to require destruction of publications of the House and Senate Internal Security Committees, and these have been disposed of. The 109th MI Group also had destroyed an attachment to USAINTC Regulation 381–100 which consisted of a list of "Organizations of Interest." On unit (6th MI Co.) commander stated the only thing he had on organizations was the Attorney General's list, and the only reason they had retained that was because they are required by regulation to post it on the unit bulletin board. Although First Army Headquarters Current Intelligence Branch had disposed of all publications of Congressional committees concerning subversive activities, they interpret the latest Army instruction, dated June 1, 1971, which permits retention without limitation of publications of the Government Printing Office [1] to allow them to begin to acquire publications of Congressional committees for reference purposes.

At First U.S. Army Headquarters, we obtained and examined a sampling of recent Monthly Intelligence Summaries. We find the summaries report information within the category of "threat" against Army functions and personnel.

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[1] Par. 7.b.(5) of DA ltr, AGDA–A(M) (1Jun71)CS, dtd 1 Jun 71, reads: "Published Documents—Library and reference tools (such as "Who's Who" and similar biographic listings) which are generally available to the public, including those publications available through the Govt. Printing Office, may be retained without limitation. Such material will not be maintained or inserted in subject or name files unless the information in question could be retained under other criteria authorized in this paragraph."

We were informed that under the new policies the size of the Monthly summary has shrunk from approximately 30 pages to an average of six (6) pages each month.

Repeatedly, the Inspection Team encountered the maxim: "If in doubt, don't do it."

As indicated in the awareness section above, all personnel within the 109th MI Group must certify they will comply with the terms of the instruction. Newly assigned personnel are briefed on the instruction upon reporting. Classes are conducted to insure that all personnel are aware of their obligations to comply with the directive.

At the 109th MI Group we found that coincident with the implementation of the new guidelines on acquisition of information all offensive counterintelligence operations, even on-post, had been suspended by the Army Assistant Chief of Staff for Intelligence. They remain in a suspended status, with no new operations contemplated.

In summary, we found compliance with the new guidelines beyond all peradventure. The extent to which operations had been shut down or suspended and research material destroyed raised, in the Inspection Team"s mind, the question whether there had not been over-compliance. More on this subject below.

IV. IMPACT

Initially, the Inspection Team attempted (naively, we found) to assess whether operational personnel liked the new guidelines, felt comfortable with them, and were able to live with them. This approach evoked some expressive grimacing and eloquent eye-rolling. Rephrasing the question, we inquired whether the new policies "had impaired their ability to perform their assigned missions." Uniformly, at each level, the responses were in the negative. This was true at the DCSI, Group, Region, and Field Office and detachment level. In IG and PM channels, the policies had had no impact, although we found familiarity with the policies. One agent doing personnel security investigations at the field office level was queried whether he liked the new directive, and he gave an affirmative response, explaining that it made clear what could be done and what could not be done.

However, this was not the whole story. At the middle management level, among field commanders and staff, we found attitudes of frustration and some consternation over developments. Army staff members do not understand quite what happened, what went wrong, and why they seem to be "blamed" for something they were told to do, and did with a great deal of enthusiasm and dispatch. Moreover, although they still have a mission of maintaining a capability for civil disturbance response, they feel the constraints will result in a diminishing ability to react and remain effective. They are also concerned about efforts of dissident groups to disrupt military functions (viz: Fort Dix in Sep 1969) and their inability to remain well-informed. They feel the constraints have tied their hands in remaining alert to developments and informed on threat-type information.[2] This has produced attitudes of negativism and resignation. One commander stated he would take no action to obtain information on civilian groups unless ordered in writing to do so. The effect on morale, among the professionals in middle management, was apparent. We repeatedly detected the belief that "our hands are tied." The latter was reflected in the suspension of all offensive or aggressive counterintelligence operations in the 109th MI Group area of operations. No new counterintelligence operations, even on-post, are in the planning stages. Feelings of negativism, "if in doubt, don't do it" were encountered at most levels.

V. LIAISON

At all levels, the Inspection Team addressed the question of liaison. Our findings have both positive and negative aspects. In the area of Personnel Security Investigations (PSI), we found liaison to be good. No difficulties are encountered in dealing with local law enforcement officials to obtain records of arrests, their disposition, results of court action, etc. In other aspects of the PSI mission, investigators operated with good relationships with the community. Liaison with State Adjutant's General in planning for civil disturbance response is excellent. Similarly, the 12th CID Group reports excellent relationships with state and local police officials.

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[2] One officer stated, "Even reading the newspaper might be deemed to be 'collection' activity proscribed by the directive."

On the other hand, the 109th MI Group reported that liaison has "become a one-way street, all take and no give. We have nothing to give; we have *no* information." Moreover, no civil disturbance information can be received, so that even attendance at monthly meetings of law enforcement officials has been discontinued (although still invited to attend) because at meetings with local police the prime subject for discussion is civil disturbance-type-information which might be construed as "collection" activity proscribed by the instruction. Military intelligence does attend bi-weekly meetings of FBI and other military Service representatives (so-called FLEA meetings) required by the Delimitations Agreement.

Because of these negative aspects, the Military Intelligence Group commander believes their ability to react in a civil disturbance situation *as they have in the past* is affected, and that a limit to this capability should be recognized. In response to our question whether they could react expeditiously to requests for intelligence *today* in a civil disturbance situation, the answer was "yes" but qualified by such factors as progressive loss of expertise, turnover of personnel, lack of training in this area, no files on prior actions, and no "corporate memory" to assist in reinstituting procedures.

In contrast to the cautious approach of the 109th MI Regional commander having discontinued attendance at meetings with local police officials (to avoid "collection" activity), we found that whenever news of possible demonstrations in the Capitol appears in the papers, the MI Detachment serving the 1st Squadron of the 6th Cavalry will on his own initiative make informal telephone liaison with friends in the 116th MI Group (in Washington, D.C.) to inquire what the local situation appears to be, whether things are "heating up" and whether it looks like there is a possibility they *may* be alerted or ordered to assume positions in support of local police. No record of these calls is made or kept. The junior officer who makes these calls did not feel any constraint existed on his making such informal liaison. Although it is understandable why this kind of advance intelligence would be operationally advantageous from the point of view of the tactical commander, as a strictly technical matter it appears to be forbidden by the terms of the Army instruction of June 1, 1971.

Other inquiries into liaison activities reveal that at Region Headquarters in Baltimore information is received from time to time from the local FBI in the form of memoranda and reports. One officer is assigned to receive this data, read it, and assess whether it constitutes threat information of the kind Army is permitted to receive. If not, the information is destroyed, with destruction certificates made, if classified. No other members of the headquarters are permitted to see FBI information unless it falls within the threat category. If the information is "threat-type" information, it is passed on to the Intelligence Command at Fort Holabird, with one copy of the transmittal report being retained for region files. Region Headquarters neither receives nor retains any intelligence summaries published by First U.S. Army, USAINTC, or other Services. They rarely have any contact with their sister Service investigators, because they do not feel free to exchange information. Before responding to a request for information from local police on the status of a former Army investigator, permission of the Intelligence Command was sought. On the other hand, Region tries to be as helpful as possible to local officials in directing them to the proper authorities to get information on former Army personnel.

In passing, we noted there is almost no contact between the Deputy Chief of Staff for Intelligence, First U.S. Army and the Commander of the 109th MI Group, stationed on the same installation. They are friendly and have social contact, but their official interaction has come to a halt.

In summary, liason for PSI and criminal investigation purposes is adequate and uninhibited. Liaison for other purposes, whether threat to DoD functions, civil disturbance, or general information, relating to domestic organizations and personalities, is severely constrained or non-existent. There exists some ambiguity over the proper boundaries of what liaison is permissible, and middle management personnel are threading their way with extreme caution.

VI. EFFECTIVENESS, TRAINING OF PERSONNEL AND SPECIAL PROBLEMS

Responses to our inquiries concerning training of investigative agents met with favorable responses. Personnel assigned to Military Intelligence units are well trained for PSI tasks. The MI companies at Fort Meade are engaged in extensive additional training, with realistic simulated training problems conducted exclusively on-post. A substantial number of personnel of the 6th MI Company are on loan to the 109th MI Group and are receiving valuable on-the-job training. The 109th reported that their agents are well-educated; 46 of the total of 110 hold bachelor degrees; four (4) have Masters degrees. The majority of the military personnel assigned to agent duties are first-termers, in the Service for three (3) year enlistments; few, if any, will reenlist. The 109th is now short 46 agents, but this lack is partially compensated for by the loan of 34 agents from the 6th MI Company at Fort George G. Meade, Maryland. In addition to military personnel assigned, the 109th has eight (8) ESP (Exempted Service Personnel) civilians who because of their expertise are assigned special tasks in controlling more sensitive or complicated cases. They represent a valuable professional resource, provide continuity, but are in short supply and the future of the ESP program appears to be in some doubt.

Ninety-five percent (95%) of the resources (in terms of man years) of the 109th MI Group goes into their mission of conducting Personnel Security Investigations. The balance of effort goes into security surveys, inspections, security breach investigations, and Counterintelligence services (technical surveys, etc.). As indicated above, there is no impairment in ability to perform the PSI mission, liaison in the PSI area is good, and training for the PSI mission is good. (The two reforger companies assigned to First U.S. Army Headquarters have primary training missions, with no operational functions at all, except to the extent they have loaned personnel to the 109th, an operational unit. Their commanders spoke proudly of their training efforts in both the Counterintelligence and Collection fields).

VII. SPECIAL PROBLEMS

Other than a shortage of agents, referred to above, the Inspection Team detected no problems of a logistical nature. Morale among agents appeared to be good, although our sampling was small. As indicated under the *Impact* heading above, morale among management personnel has undergone some trauma, caused not so much by the directives as the undercurrent of personnel reassignments, reprimands and one firing. This undercurrent is not really understood by persons in the field, has created consternation, inhibition, and a somewhat grim resolve of "not on my watch."

The Inspection Team questioned several senior officers about what they would do if a *hypothetical* commander insisted they go out and obtain information about a civilian organization or individual. "what would be your response?" The response, as expected was: "Well, I can't do it," or "It isn't in my charter," or "It is forbidden by the DA letter." When we persisted with this hypothetical commander,[3] who rejected excuses and wanted some action, "Then what would you do?" the response was: "Well, I guess I would have to do it."

The purpose of pursuing this line of questioning, we believed, was instructive from the following points of view:

(1) An incident of unauthorized investigation of a nonaffiliated civilian has occurred elsewhere, so that it was not beyond the realm of possibility.

(2) The Army implementing instruction contains a special paragraph to the effect that anyone observing "apparent violations of the policies" will report the circumstances to his superior or to the Inspector General. (The IG of First Army was aware of this provision but had received no reports of any kind concerning the directive).

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[3] We were careful to point out we were not suggesting their current commander would make such demands, but rather were asking them to suppose they were in that position.

(3) There is a possibility that the stubbornly insistent commander we postulated had a legitimate need for the information, either because it represented a threat to Army functions or property, or because it represented one of those exceptional circumstances in which a local commander may, under the instruction authorize attendance at a demonstration or other activity when in his judgment "the threat is direct and immediate and time precludes obtaining prior approval." (Par. 8e, DA ltr, dtd 1 Jun 71).

On the latter note, the Inspection Team concluded their critique to the persons being inspected at the First U.S. Army Headquarters. They suggested to the attendees that they look not only at the activities prohibited but to the positive aspects, the measures which are permitted, and not to succumb to negativism. They were urged to advise their higher headquarters if the policies were hampering the performance of their missions, and to give facts and examples where this had occurred, so that their experiences could have an impact on policy formulations at higher level.

VIII. CONCLUSIONS

The inspection was conducted in an atmosphere of complete cooperation, mutual trust and honesty. The Inspection Team found acute awareness of the DIRC directed policies, and total compliance with the letter of implementing instructions. The Inspection Team was impressed with the rather grim acceptance of the new policies which suggests that the realignment of roles in which the Army finds itself is imperfectly understood by middle management personnel in the field, to an extent that morale is adversely affected to a degree. We suggest that some of the side effects of DIRC directed policies might be wholly unanticipated, such as the indefinite suspension of all offensive counterintelligence operations, even on-post operations.

Remarks made in exit interviews by command and staff officers couched in terms of the needs of "combat intelligence," and the classic need to know as much about the "enemy" as possible, suggest to us that a continuing need for communications with field commanders on the role and responsibilities of Army commanders in civil disturbance situations is required. Although everyone at the exit critique agreed that the Army's role is an *in extremis* one, we detected a residual belief that the Army's role is more than official doctrine admits. It is this persistent assumption that the *real* responsibilities exceed the *stated* mission which accounts, we believe, for much of the misgivings about policies ordered into effect over the past year.

Respectfully submitted.

ROWLAND A. MORROW,
Director, DIPO.
W. DONALD STEWART,
Chief, Investigation Div., DIPO.
WILLIAM M. MANN, Jr.,
Lt. Colonel, U.S. Army,
Army representative from ACSI.

Attachment.

APPROVAL

As the Defense Investigative Review Council principal chartered to conduct this first DIRC inspection, I directed the areas to be covered by the team, participated in the exit critique, discussed the details of this report with the Inspection Team, and have approved their findings. I commend this report to the Council members for their review and further consideration. The attitudinal problem reflected in the report would appear to merit our special attention.

D. O. COOKE,
Chairman, DIRC.

ATTACHMENT 19

HEADQUARTERS DEFENSE INVESTIGATIVE SERVICE,
Washington, D.C., 16 July 1973.

INVESTIGATIONS

ACQUISITION OF INFORMATION CONCERNING PERSONS AND ORGANIZATIONS NOT AFFILIATED WITH THE DEPARTMENT OF DEFENSE

	Paragraph
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Prohibited activities	8
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1. *Purpose:* To establish DIS policy, procedures, limitations and guidance pertaining to the collecting, processing, storing and dissemination of information concerning persons and organizations not affiliated with the Department or Defense (DoD) as such are applicable to all investigations conducted by the Defense Investigative Service (DIS).

2. *References:*

a. DoD Directive 5200.26, "Defense Investigation Program," 17 Feb 71.

b. DoD Directive 5200.27. "Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense," 1 Mar 71.

c. DoD Directive 5105.42, "Charter for the Defense Investigative Service," 18 Apr 72.

3. *Explanation of terms and definitions:* An approved list of definitions has been established by the Defense Investigative Review Council (DIRC) as applied to DOD Directives 5200.26 and 520.27. These definitions are contained in Attachment 1 to this regulation.

4. *Applicability and scope:* This regulation is applicable to all DIS components and personnel within the 50 states, the District of Columbia and the Commonwealth of Puerto Rico. It is applicable to all investigations conducted by the DIS.

5. *Responsibilities:* Assistant Directors, Chiefs of Headquarters Special Staff Offices and District Commanders will insure that each DIS employee and military member is briefed on this regulation upon initial assignment and once each year thereafter.

6. *Policy:*

a. In accordance with the provisions of DoD Directive 5200.27, DIS policy prohibits collecting, reporting, processing or storing information on individuals or organizations not affiliated with the DoD, except in those limited circumstances where such information is essential to the accomplishment of DIS missions outlined below.

b. This regulation does not abrogate any provision of the Delimitations Agreement of 1949, as amended, between the Federal Bureau of Investigation and the Departments of the Army, Navy and Air Force, nor preclude the collection of information required by Federal Statute or Executive Order.

7. *Authorized activities:*

a. DIS components are authorized to conduct investigations as they pertain to the DIS mission as set forth in DoD Directive 5105.42. These investigations may be conducted as they pertain to the following categories of persons:

(1) Members of the Armed Forces, including retired personnel; members of the Reserve components; and applicants for commission or enlistment.

(2) DoD civilian personnel and applicants for such status.

(3) Persons having need for access to official information requiring protection in the interest of national defense under the DoD Industrial Security Program or being considered for participation in other authorized DoD programs.

b. While conducting the DIS mission as set forth in DoD Directive 5105.42, DIS components may acquire information relating to activities threatening defense military and civilian personnel and defense activities and installations, including vessels, aircraft, communications, equipment and supplies. Only the following types of activities justify acquisition of information by DIS personnel:

(1) Subversion of loyalty, discipline or morale of DoD military or civilian personnel by actively encouraging violation of law, disobedience of lawful order or regulation, or disruption of military activities.

(2) Theft of arms, ammunition or equipment, or destruction or sabotage of facilities, equipment or records belonging to DoD units or installations.

(3) Acts jeopardizing the security of DoD elements or operations or compromising classified defense information by unauthorized disclosure or by espionage.

(4) Unauthorized demonstrations on active or reserve DoD installations.

(5) Direct threats to DoD military or civilian personnel in connection with their official duties or to other persons who have been authorized protection by DoD resources.

(6) Activities endangering facilities which have classified defense contracts or which have been officially designated as key defense facilities.

(7) Crimes for which DoD has investigative or prosecutive responsibility.

8. *Prohibited activities:* The acquisition of information on individuals or organizations not affiliated with the DoD is restricted to that which is essential to the accomplishment of the assigned DIS mission. No DIS component may collect or retrain in its files any information prohibited by this regulation. The following activities are specifically prohibited:

a. No information shall be acquired about a person or organization solely because of lawful advocacy of measures in opposition to government policy.

b. There shall be no physical or electronic surveillance of Federal, state or local officials or of candidates for such offices.

c. There shall be no electronic surveillance of any individual or organization except as authorized by law.

d. There shall be no covert or otherwise deceptive surveillance or penetration of civilian organizations unless specifically authorized by the Secretary of Defense or his designee.

e. No DIS personnel will be assigned to attend public or private meetings, demonstrations or other similar activities for the purpose of acquiring information, the collection of which is authorized by this regulation, without specific prior approval by the Secretary of Defense or his designee.

f. No computerized data banks shall be maintained relating to individuals or organizations not affiliated with the DoD unless specifically authorized by the Secretary of Defense or his designee.

9. *Operational guidance:*

a. Nothing in this regulation shall be construed to prohibit the prompt reporting to law enforcement agencies of any information indicating the existence of a threat to life or property, or the violation of law, nor to prohibit keeping a record of such a report.

b. Nothing in this regulation shall be construed to restrict the direct acquisition by overt means of the following information:

(1) Listing of Federal, state and local officials who have official responsibilities related to the control of civil disturbances. Such listings may be maintained currently.

(2) Physical data on public or private installations, facilities, highways and utilities, as appropriate, required to carry out a mission assigned by this regulation.

c. Access to information obtained under the provisions of this regulation shall be restricted to government agencies which require such information in the execution of their duties.

d. Information within the purview of this regulation shall be destroyed within 90 days after acquisition unless its retention is required by the Secretary of Defense or through the Chairman, DIRC. Retention criteria established by the DIRC are included as Attachment 2.

e. As stated in Paragraph 3e of Attachment 2, the retention period for personnel security investigations is 30 years, except where adverse action is taken or where affiliation with DoD is not completed. Where adverse action is taken the file will be retained permanently. In pre-appointment investigations, where the appointment is not made due to information developed during the investigation the file will be retained permanently. However, if the appointment is not made for some other reason not related to the investigation, the file will be destroyed at the end of one (1) year. Normally, PSI files will be automatically placed in the 30 year retention category when they are closed. Any files created as a result of NACs or PSIs on individuals for the purposes listed in subparagraphs (2) and (3) of paragraph 2c of Attachment 2 will be marked for destruction one year after the event. When information is received by the Investigative Records Division. Support Systems Center (DO960) that adverse action has been initiated or that affiliation with the DoD was not completed, DIS Form 3 will be prepared showing the new retention category to update the file records. Where a file is assigned to the permanent retention category because of notice of the initiation of adverse action, the retention category will not be changed although the final action is not adverse. The file record and computer holdings will be purged at least annually to delete files that should be destroyed. This should be as nearly an automatic process as possible and no file reviews are required.

f. When other types of files or documents under DoD Directive 5200.27 are created, a DIS Form 3 will be prepared for each document or file as appropriate. Files or documents with different retention periods will be filed separately or controlled by a suspense system to assure that destruction or annual review is accomplished as required.

g. All retained items previously identified for annual review will be screened to determine if a threat continues to exist. This annual screening will be completed prior to 15 May each year, at which time a report listing those documents DIS units feel should be retained will be forwarded to DIS HQ (DO010) to obtain the approval of the Director, DIS. This report will include a full description of these documents and specific detailed justification for their continued retention. This report will be submitted so as to arrive at DO010 not later than 15 May each year. If approved, the Director's approval will be filed with the document concerned. If retention is not approved, the document will be destroyed as directed.

h. Information being distributed to non-DIS recipients within DoD, unless exempt, will bear a prominent caveat as follows: "DoD Directive 5200.27 requires destruction of this document not later than ——————."

i. In the event any DIS element acquires information which is not clearly within the guidelines and direction established by this regulation, an inquiry will be directed to the Special Investigations Center (SIC), DISHQ (DO500). The inquiry shall include a complete text of the information acquired, together with a full identification of the source(s) and mode(s) of acquisition. The SIC will evaluate the questioned data in light of the DIRC criteria and furnish an expeditious response regarding the disposition of the data concerned.

For The Director,
Mason W. Gant III,
Colonel, USAF,

Attachments.

Attachment 1—Terms and Definitions Approved by the Defense Investigative Review Council for Use with DOD Directives 5200.26 and 5200.27

1. Affiliation with the Department of Defense. A person, group of persons, or organizations is considered to be affiliated with the DOD if they are:

a. Employed by or contracting with the DOD or any activity under the jurisdiction of DOD, whether on a full time, part time, or consultive basis;

b. Members of the Armed Forces on active duty, National Guard members, those in a Reserve status, or in a retired status;

c. Residing on, having authorized official access to, or conducting or operating any business or other function at any DOD installation or facility.

d. Having authorized access to defense information;

e. Participating in other authorized DOD programs;

f. Applying for or being considered for any status described above in a, b, c, d, or e. (All persons or organizations not falling within the above criteria are considered to be not affiliated with the Department of Defense).

2. Civil Disturbances. Riots, acts of violence, insurrections, unlawful obstructions or assemblages, or other disorders, prejudicial to public law and order

within the 50 states, District of Columbia, Commonwealth of Puerto Rico, United States possessions and territories, or any political subdivision thereof. The term civil disturbance includes all domestic conditions requiring or likely to require the use of Federal Armed Forces pursuant to Chapter 15 of Title 10, United States Code.

3. Clandestine. Conducted in such a way as to assure secrecy or concealment. Differs from covert in that the emphasis is on concealment of activity or operation as well as concealment of the identity of the sponsor.

4. Collection (Acquisition). The obtaining of information in any manner, to include direct observation, liaison with official agencies, or solicitation from official, unofficial, or public sources.

5. Covert. Conducted in such a way as to conceal identity or permit plausible denial by the sponsor. Differs from clandestine in that emphasis is on concealment of identity of sponsor rather than on concealment of activity or operation.

6. Deceptive. Activity, planned and executed so that a reasonable person would be led to believe personnel involved are not associated with any military investigative organization.

7. Defense Investigative Program. Paragraph III of DOD Directive 5200.26 defines the Defense Investigative Program as those investigative and related counterintelligence activities which are undertaken to:

a. Safeguard defense information.

b. Protect DOD personnel against subversion.

c. Protect DOD functions and property, including facilities which have classified defense contracts or which have been officially designated as key defense facilities.

d. Conduct personnel security investigations for DOD personnel and contractor employees under the Defense Industrial Security Program.

e. Conduct counterintelligence surveys, services, and inspections.

f. Conduct investigative activities authorized in connection with civil disturbance responsibilities within the United States, the District of Columbia, the Commonwealth of Puerto Rico and United States territories and possessions. The term Defense Investigative Program does not apply to pretrial investigations required by the Uniform Code of Military Justice, criminal investigations other than those involving the functions enumerated above, activities incident to the acquisition of foreign intelligence information, or to the activities involved in ensuring communications security.

8. Espionage. Overt, covert, or clandestine activity designated to obtain information relating to the national defense with intent or reason to believe that it will be used to the injury of the United States or to the advantage of a foreign nation. For espionage crimes see Chapter 37 of Title 18, United States Code.

9. Investigation. A duly authorized systematized, detailed examination or inquiry to uncover facts and determine the truth of a matter.

10. Investigative and Related Counterintelligence Activities:

a. Investigative. Activities, other than counterintelligence activities as defined below, which are within the scope of the Defense Investigative Program as specified in paragraph III of DOD Directive 5200.26. (See paragraph 7 above for definition of "Defense Investigative Program".) Investigative activities include the collecting, processing, reporting, storing, recording, analyzing, evaluating, producing, and disseminating of information within the scope of the directive.

b. Counterintelligence. Activities, both offensive and defensive, designed to detect, neutralize, or destroy the effectiveness of foreign intelligence activities.

11. Key Defense Facilities (Key Facility List). Key defense facilities are synonymous with the Key Facility List as designated under 50 U.S.C. 784(b) by the Assistant Secretary of Defense (Installations and Logistics) and J4 Joint Staff, Joint Chiefs of Staff.

12. Overt. Conducted openly and in such a way that the sponsor is or may be known or acknowledged.

13. Penetration. The infiltration under DOD auspices of an organization or group for the purpose of acquiring information.

14. Personnel Security Investigations. An inquiry into the activities of an individual which is designed to develop pertinent information pertaining to his trustworthiness, suitability for a position of trust as related to his loyalty, character, emotional stability, and reliability.

15. Sabotage. An act with intent to injure, interfere with, or obstruct the national defense of the United States by willfully injuring or destroying, or attempting to injure or destroy, any national defense or war material, premises, or utilities, to include human and natural resources. For sabotage crimes see Chapter 105 of the Title 18, United States Code.

16. Security. Measures taken by, or condition of, a DOD element affording protection against all acts designed to, or which may, impair its effectiveness.

17. Storage. The retention of data in any form, usually for a specified period, of the purposes of orderly retrieval and documentation.

18. Surveillance. The observation or monitoring of persons, places, or things by visual, aural, photographic, electronic, or other physical means which is directed for the purpose of obtaining information.

19. Subversion of DOD Personnel. Actions designed to undermine the loyalty, morale, or discipline of DOD mlitary and civilian personnel.

ATTACHMENT 2—INFORMATION RETENTION CRITERIA ESTABLISHED BY THE DEFENSE INVESTIGATIVE REVIEW COUNCIL (DIRC)

1. DIRC Retention Criteria. DIRC has developed retention criteria for information obtained under DOD Directive 5200.27. In establishing the criteria, DIRC has been guided by the following principles:

a. In retaining investigative information deemed essential to the accomplishment of DOD missions, due regard will be given to the need to respect individual privacy, as well as to economy and efficiency of operations.

b. Protection of DOD functions and property, civil disturbance operations, and the conduct of personnel security programs require retention of information concerning personnel and organizations not affiliated with the DOD.

c. Retention of information is not authorized if the collection of such information is forbidden by DOD Directive 5200.27, or if it would have been forbidden had the directive been in effect at the time it was collected.

2. Criteria for Retaining Information Involving the Protection of Department of Defense Functions and Property:

a. The following types of information on non-DOD-affiliated organizations or individuals, acquired in accordance with this regulation are authorized for retention beyond 90 days, subject to annual verification by the Director, DIS. At the time of the annual verification, continued retention is authorized when the organization or individual involved poses one of the following types of continuing threats:

(1) Demonstrated Hostility. Activities in which an actual example of violent or criminal hostility has been carried out within the previous year.

(2) Threatened Hostility. Activities which during the previous year have explicitly threatened DOD functions.

(3) Potential Hostility. Activities whose continuing hostile nature in the vicinity of DOD installations provides a significant potential source of harm to or disruption of the installation or its functions.

(4) Dissidence. Activities which during the previous year have counseled or published information actively encouraging violation of law, disobedience of lawful order or regulations, or disruption of military activities.

b. Information acquired in special operations in accordance with paragraph 8d of this regulation may be permanently retained, unless a lesser period is specified by the approving authority.

c. In order to aid appropriate authorities in evaluating certain nonaffiliated organizations or individuals whose activities involve them with the Department of Defense, retention of information is authorized for activities which fall into one of the following categories:

(1) Activities routinely servicing DOD installations, Retention is authorized for 1 year after the service is discontinued.

(2) Activities involving a one-time request for admittance to installations (speakers, bands, drill teams, etc.). Retention is authorized for 1 year after the event.

(3) Activities involving a request that DOD personnel attend or officiate at meetings, ceremonies, etc., as representatives of DOD. Retention is authorized for 1 year after the event.

(4) File holdings of Investigative agencies resulting from any activities involving an inquiry from members of the public to the DOD function or

units, unit insignia, signatures or photos of senior commanders, etc., may be retained subject to annual review for pertinency."

(5) File holdings of Investigative agencies resulting from any activities involving an unsubstantiated report to DOD components from members of the public alleging imminent invasions, communist plots and similar events of a delusional nature, and assorted "crank" files, may be retained in excess of one year but subject to annual review for their pertinency."

d. Retention of information pertaining to an authorized investigation not yet completed on the date of annual verification is authorized for a period of 1 year, or until the investigation is completed, whichever occurs sooner. Any further retention must meet the requirements stated above.

3. Retention Criteria for Information Authorized for Personnel Security Investigation Purposes:

a. Paragraphs 7a(1) and (2) of this regulation relate to personnel security investigations of DOD-affiliated personnel. Paragraph 7a(3) relates to personnel for whom personnel security investigations or checks are authorized for particular purposes, including those for a short time duration. It is necessary in relationship to each of the three paragraphs referenced above to develop individual criteria falling into three categories:

(1) Information collected on non-DOD-affiliated civilians incident to the investigations of an affiliated member.

(2) Evaluations of nonaffiliated organizations and individuals required to adjudicate personnel security investigations.

(3) Determination of the period of retention of investigations in general.

b. Retention is authorized of information collected on non-DOD-affiliated individuals and organizations incident to an investigation for the period of time that the report itself may be retained as described in paragraph e below. Additionally, unless the information in question could be retained under other criteria authorized by the DIRC, indexing in the DCII or cross-referencing of information on nonaffiliated individuals or organizations is prohibited.

c. Reference card files listing firms, organizations, and individuals repeatedly contacted during the course of personnel security investigations may be retained as long as the listings are relevant.

d. Brief evaluations of nonaffiliated individuals or organizations used in adjudication of personnel security investigations are authorized for retention. These evaluations shall be reviewed annually for pertinency. The material upon which these evaluations may be based may be retained for a period of 1 year.

e. Retention of a personnel security investigation on file is authorized for 30 years maximum, except as follows:

(1) Files which have resulted in adverse action against an individual will be retained permanently.

(2) Files developed on persons who are being considered for affiliation with DOD will be destroyed within 1 year if the affiliation is not completed. In cases involving a pre-appointment investigation, if the appointment is not made due to information developed by investigation the file will be retained permanently. If the appointment is not made for some other reason not related to the investigation, the file will be destroyed within one (1) year.

4. Retention Criteria for Criminal and Related Files. Criminal and investigative files and the records of acts or events occurring on DOD installations containing information concerning individuals and organizations not affiliated with the Department of Defense should be retained in accordance with existing Federal Records Disposal Schedules.

5. Retention Criteria for Published Documents. Nothing in this regulation precludes the holding and usage by any agency of DOD of library and reference materials generally available to the public, including but not limited to those publications available through the Government Printing Office. Such material will not be maintained or inserted in subject or name files unless the information in question could be retained under other criteria authorized in this study report.

6. Preexisting Files. In view of the estimated high costs to complete an immediate purge of file holdings, a continuing purge will be conducted on a routine basis. At the time any file is withdrawn for use it will be reviewed to determine whether it can legally be retained in accordance with established criteria above.

December 10, 1973.

Mr. D. O. Cooke,
Deputy Assistant Secretary of Defense,
The Pentagon,
Washington, D.C.

Dear Mr. Cooke: This is to acknowledge with thanks your response of November 8, 1973, to the Subcommittee inquiry of July 30, 1973, relating to counterintelligence activities of the military.

For the most part, I found your responses thorough and forthright, reflecting a great deal of diligence and candor on the part of those responsible. I am particularly appreciative of your making the inspection reports of the DIRC available to the Subcommittee. While they do indicate some discrepancy between actual operations and the Department of Defense regulation, they show, for the most part, that the military is aware of and concerned with limiting its domestic intelligence-gathering to information pertinent to the military mission. If the Subcommittee's investigation had any lasting value, it lies in this heightened sensitivity on the part of the military to its proper role in a domestic society.

Despite the generally high caliber of your response, there is one area which requires further explanation and clarification—the matter of overseas counterintelligence operations conducted against civilians. The Subcommittee has in its possession evidence which indicates your response with regard to these operations is incomplete, if not inaccurate. I am thus enclosing a further series of questions which deal specifically with this subject. I am confident that they will be treated with the same candor and diligence which marked your answers to our earlier inquiry.

With kindest wishes,

Sincerely yours,

Sam J. Ervin, Jr.,
Chairman.

Enclosure.

Questionnaire: Overseas Surveillance

1. The Subcommittee has evidence that the U.S. Army in 1972 and 1973 opened and, in some cases, retained the mail of civilians living in West Germany and the mail of military personnel stationed in West Germany.

a. Were such "mail cover" operations undertaken by the Army during this time period?

b. If so, under what authority were they undertaken? Specifically,

(1) What is the stautory authority for such operations?

(2) What are the DoD and Army regulations upon which authority to open mail is claimed?

(3) What military or civilian official ordered these operations?

(4) Were these operations authorized or approved by the government of West Germany?

(5) Please furnish the Subcommittee copies of any statute, regulation, order, or approval referred to in subsections 1-4, above.

c. What was the scope of these operations? Specifically,

(1) How many American civilians living in West Germany were the subjects of "mail covers" in 1972 and 1973? Please list names, addresses and dates of coverage.

(2) How many foreign civilians were subjects of such "mail coverage" in 1972 and 1973? Same specificity.

(3) How many civilian organizations and publications in West Germany were the subjects of mail coverage during 1972 and 1973?

(4) How many U.S. military personnel stationed in West Germany were the subjects of mail covers during 1972 and 1973? Same specificity.

d. How were "mail cover" operations conducted? Specifically,

(1) How was it determined who was to be subject to mail coverage?

(2) Were these operations conducted by the U.S. Army personnel in APO's?

(3) Were these operations conducted by the U.S. Army personnel in West German post offices?

(4) Were they conducted by foreign personnel in West German post offices?

(5) Was the mail of subjects photographed or photocopied?

(6) Was the mail of subjects ever retained and never forwarded?

(7) Was the mail of subjects ever destroyed?

(8) What was the disposition of copies or the originals of the mail subject to such coverage?

(9) Was mail, or copies of mail, maintained by military intelligence units?

(10) Was mail, or copies of mail, ever subsequently made available to any agency, department, office, or official of the U.S. government?

(11) Was mail, or copies of mail, ever made available to any agency or department of the West German government?

(12) Was mail, or copies of mail, ever classified upon opening?

(13) If mail coverage operations were conducted with the cooperation of West German authorities, indicate what agreement(s) provide for this cooperation and the extent of the cooperation they provide for. Include copies if available.

2. The Subcommittee has evidence that the U.S. Army in 1972 and 1973 covertly infiltrated civilian organizations and publications in West Germany for the purpose of gathering information about these organizations and publications.

a. Were Army agents used in such a manner?

b. If so, what is the authority for such infiltration? Specifically,

(1) What is the statutory authority for such operations?

(2) What are the DoD and Army regulations upon which authority for these operations is claimed?

(3) What military or civilian official ordered these operations?

(4) Were these operations authorized or approved by the government of West Germany?

(5) Please furnish the Subcommittee copies of any statue, regulation, order, or approval referred to in subsections 1–4, above.

c. What was the scope of these infiltration operations? Specifically,

(1) How many civilian organizations and publications located in West Germany were the subjects of infiltration operations during 1972 and 1973? Please list names, addresses, and inclusive dates of the infiltration.

(2) Were informants used to report on specific individuals during this period? If so, please give the names, addresses and inclusive dates of coverage for those individuals subject to such reports.

d. How were infiltration operations carried out? Specifically,

(1) How was it determined that a particular organization or publication would be the subject of an infiltration?

(2) Were these operations conducted by U.S. Army personnel? If so, how many were engaged in such activity during 1972 and 1973?

(3) Were these operations conducted by U.S. civilians? If so, how many were engaged in such activity during 1972 and 1973?

(4) Were these operations conducted by foreign personnel? If so, how many were engaged in such activity during 1972 and 1973?

(5) Were electronic devices ever used by personnel performing these operations to record the activities or proceedings of the organizations being infiltrated? If so, please identify the organization, the electronic device used by the infiltrating agent, and the dates such devices were used.

(6) Did an infiltrating agent report the information he obtained by filing written reports? If so, where were these reports ultimately filed?

(7) Did an infiltrating agent ever report orally to a supervising official? If so, did the supervising official then prepare written reports? What was the disposition of these reports?

(8) Where electronic devices were used, what disposition was made of the recorded information?

(9) How were infiltration agents, both U.S. Army or foreign, paid?

(10) Were the reports of infiltrating agents classified?

(11) Were infiltration operations ever conducted with the knowledge of the West German government? If so, please identify the operation(s) involved by name, place, and inclusive dates.

(12) Were infiltration operations ever conducted with the cooperation of the West German government? If so, please identify the operation(s)

involved by name, place, and inclusive dates, and describe the extent of West German cooperation.

3. The Subcommittee has evidence that the U.S. Army in 1972 and 1973 used photographic equipment to record the location and activities of civilians and civilian organizations located in West Germany.

a. Did the Army employ photographic equipment to such use?

b. If so, what is the authority for these operations? Specifically,

(1) What is the statutory authority for such operations?

(2) What are the DoD and Army regulations upon which authority for such operations is claimed?

(3) What military or civilian official ordered these operations?

(4) Were these operations authorized or approved by the government of West Germany?

(5) Please furnish the Subcommittee copies of any statute, regulation, order, or approval referred to in subsections 1–4, above.

c. What was the scope of the operations? Specifically,

(1) How many American civilians living in West Germany were the subjects of such "photographic surveillance" in 1972 and 1973? Please list names, addresses, and dates of photographs.

(2) How many foreign civilians were subjects of such "photographic surveillance" in 1972 and 1973? Same specificity.

(3) How many civilian organizations and publications in West Germany were the subjects of such "photographic surveillance" in 1972 and 1973? Same specificity.

d. How were these operations carried out? Specifically,

(1) How was it determined when this technique would be employed?

(2) Were such activities carried out by U.S. Army personnel? If so, how many were engaged in such activity during 1972 and 1973?

(3) Were these activities carried out by U.S. civilians? If so, how many were engaged in this activity during 1972 and 1973?

(4) Were these operations carried out by foreign personnel? If so, how many were engaged in this activity during 1972–1973?

(5) Were the photographs which resulted from these activities placed in intelligence files on the civilians and civilian organizations being monitored?

(6) Were such photographs ever supplied to any U.S. agency, department, office, or official—civilian or military—other than members of military intelligence units? If so, please specify the names of such agencies or individuals and the nature of the photographs submitted.

(7) Were such photographs ever supplied to the West German government? If so, please specify the nature of the photographs supplied.

4. The Subcommittee has evidence that the U.S. Army wiretapped the telephones of civilians in West Germany during 1972 and 1973.

a. Did the U.S. Army engage in such wiretapping?

b. If so, what is the authority for these wiretaps? Specifically,

(1) What is the statutory authority under which these wiretaps were undertaken?

(2) What are the DoD and Army regulations which are claimed as authority for these operations?

(3) What military or civilian officials ordered these wiretaps?

(4) Were these operations authorized or approved by the government of West Germany?

(5) Please furnish the Subcommittee copies of any statue, regulation, order, or approval referred to in subsections 1–4, above.

c. What was the scope of these operations? Specifically,

(1) How many American civilians living in West Germany were the subjects of wiretaps in 1972 and 1973? Please list names, addresses, and inclusive dates such persons were subject to wiretapping.

(2) How many foreign civilians were subject to such wiretaps in 1972 and 1973? Same specificity.

(3) How many civilian organizations and publications in West Germany were the subjects of wiretaps during 1972 and 1973? Same specificity.

(4) How many U.S. military personnel stationed in West Germany were the subjects of wiretaps during 1972 and 1973? Same specificity.

d. How were the wiretaps carried out? Specifically,

(1) How was it determined that a wiretap would be installed?

(2) Was the approval of the West German government always obtained before the installation of a wiretap? Please describe any instances in which their approval was not obtained.

(3) Were the wiretaps physically installed by U.S. Army personnel?

(4) Were the wiretaps ever physically installed by foreign personnel?

(5) Were wiretaps ever installed at the telephone substation?

(6) Were wiretaps ever installed by surreptitiously gaining entry or access to the premises designated for the wiretaps?

(7) Were logs ever maintained for wiretapped telephone lines?

(8) Were summaries ever made of wiretapped conversations?

(9) Were reports ever filed on the basis of wiretapped conversations?

(10) Were logs, summaries, or reports of wiretapped conversations ever maintained by military intelligence units in West Germany during 1972 and 1973?

(11) Were logs, summaries, or reports of wiretapped conversations ever made available to any agency, department, office or official of the U.S. government?

(12) Were any logs, summaries, or reports of wiretapped conversations ever made available to the West German government?

(13) Were logs, summaries, or reports of wiretapped conversations ever classified?

(14) Was the equipment used in wiretapping the property of the United States or the West German government?

5. The Subcommittee has been unable to ascertain precisely what agency or official was responsible for the institution of these aforementioned counterintelligence measures in West Germany during 1972 and 1973. Press reports indicate that Major General Harold R. Aaron, formerly the Deputy Chief of Staff for Intelligence, USAREUR, was one individual responsible for these operations.

a. Was Major General Aaron responsible for the institution of the counterintelligence program in West Germany in 1972 and 1973? Specifically,

(1) What orders or instructions, if any, were issued by HQ, USAREUR, in 1972 and 1973, regarding counterinelligence operations in West Germany?

(2) Please indicate the major intelligence commands (to battalion level) subordinate to HQ USAREUR, which operated in West Germany during 1972 and 1973. Please include the name of the commanding officer of each such unit during this time period.

(3) Were any of the aforementioned counterintelligence measures undertaken by USAREUR or a subordinate intelligence element in response to a request from any agency, department, office or official of the U.S. government?

(4) Were any of the aforementioned counterintelligence measures undertaken by USAREUR or a subordinate intelligence element in response to a request from any agency, department, office or official of the West German government?

(As of June 1, 1974, no response to this letter had been received by the Subcommittee.)

December 6, 1973.

Colonel Mason Gant III,
Executive Director,
Defense Intelligence Service,
The Pentagon,
Washington, D.C.

Dear Colonel Gant: The *Washington Post* of December 5th, in an article entitled "Ex-Officer Likens Pentagon Unit to Plumbers" quotes you as saying that DIS has engaged in "only 2 or 3 special investigations" during the last year. These investigations, states the article, were over and above the normal security clearance investigations performed by the agency, and involved investigations of security leaks.

I would like to know what the nature of these investigations were. Specifically, I would like to know what was the substance of the leaks that were investigated, the name of the individual and office which requested and authorized these special investigations and finally, how these special investigations were carried out.

It had been my prior understanding that the activities of the Defense Intelligence Service were limited strictly to investigating and processing security clearances. Apparently, your activities are more varied. I would appreciate your describing for me what other duties DIS performs, or may be permitted to perform, upon direction by other authority. Please include the pertinent directives and other authority for these special functions.

With kindest wishes,

Sincerely yours,

Sam J. Ervin, Jr.,
Chairman.

Defense Investigative Service,
Washington, D.C., 2 January 1974.

Hon. Sam J. Ervin, Jr.,
U.S. Senate,
Washington, D.C.

Dear Senator Ervin: This is in reply to your letter of December 6, 1973, addressed to Colonel Mason W. Gant III, in which your inquire about the activities of the Defense Investigative Service.

The Defense Investigative Service was established by the Secretary of Defense under the authority vested in him by 10 U.S.C. 133. The charter of the agency is set forth in Department of Defense Directive 5105.42 dated April 18, 1972, and was published in 38 CFR 7131 on March 16, 1973. The primary purpose of establishing the agency was to consolidate the responsibility for conducting all personnel security investigations for the Department of Defense within the 50 states and Puerto Rico. These investigations are used by the Department of Defense in determining the suitability of personnel for access to classified defense information.

Included in the charter is authority for the Defense investigative Service to conduct "such other special investigations as the Secretary of Defense may direct". When Colonel Gant was interviewed by Mr. John Hanrahan of the Washington Post, he made reference to the "two or three special investigations" conducted by the Defense Investigative Service during the past year. These are the investigations discussed in my testimony given before the Subcommittee on Department of Defense of the Committee on Appropriations, House of Representatives, on October 5, 1973. These "special investigations" involved inquiries into the unauthorized disclosure of defense classified information.

The investigations were directed by the Secretary of Defense based upon information furnished in two instances by the General Counsel of the Department of Defense, and in the other by the Deputy Assistant Secretary of Defense (Administration).

The first case involved articles in the New York Times dated February 17, 1973, entitled "MISSILE SHOTS IN SOVIET ASIA REPORTED" and February 27, 1973, entitled "SOVIET IS SAID TO BUILD NAVY'S SECOND CARRIER."

The second case involved articles in the Baltimore Sun dated April 5, 1973, entitled "CAMBODIA SAID TO HOLD OFF COLLAPSE" and April 10, 1973, entitled "BIG VIET BUILDUP REPORTED."

The third case involved Associated Press dispatches of 1447 and 1500 hours on April 16, 1973, headlined "BOMBING—LAOS."

Each of the above cited articles contained items of defense information which was classified SECRET.

The purpose of the Defense Investigative Service inquiries was to determine if any person or persons within the Department of Defense had made an intentional unauthorized disclosure of classified information. In conducting these inquiries, which consisted solely of personal interviews, Defense Investigative Service Agents spoke to only Department of Defense personnel and neither specialized investigative techniques nor electronic measures were used. These investigations failed to identify any Department of Defense personnel as the sources of unauthorized disclosures of classified information.

The Defense Investigative Service was utilized to conduct the above investigations since it was necessary to interview personnel of the three military departments as well as persons assigned to OSD. In view of this, it was considered more practical to have the Defense Investigative Service conduct the case rather than an investigative service of one of the military departments. It is anticipated that the Defense Investigative Service will be requested to conduct special inquiries of this character under similar circumstances in the future.

I wish to thank you for the opportunity of explaining the remarks of Colonel Gant as reported in the Washington Post, and to provide you the above additional information.

Sincerely,

JOSEPH J. CAPPUCCI,
Brigadier General, USAF,
Director.

JANUARY 29, 1974.

Mr. D. O. COOKE,
Deputy Assistant Secretary of Defense,
The Pentagon,
Washington, D.C.

DEAR MR. COOKE: I am writing again concerning a matter relating to the Subcommittee's follow-up of military counterintelligence activity. To recall what has transpired to date, the Subcommittee sent its initial inquiry to DoD on July 30, 1973. You responded with detailed answers on November 8, 1973. Following this exchange, the Subcommittee sent a second set of questions regarding counterintelligence activities in West Germany on December 10, 1973. We received an interim reply from you dated January 8, 1974, and are at present awaiting your final response to the December letter.

Subsequent to our letter of December 10, 1973, it has come to the Subcommittee's attention that certain counterintelligence files are apparently still being maintained by the Department of Defense despite the provisions of DoD Directive 5200.27.

In a pleading recently filed by the Department in the case of *People Against Racism et al.*, v. *Melvin S. Laird, et al.*, Civil Action No. 3565–69 (United States District Court for the District of Columbia), the Department admits that it currently maintains files on certain individuals whose names correspond to some of the plaintiffs in the suit. Para. 23 of the Eighth Defense in the Department's Answer to the Plaintiff's First Amended Complaint reads in part as follows:

"23. The Federal defendants admit that files are currently maintained by the Department of Defense on certain individuals in the names of Arthur Waskow, William Weiss and Ralph Russell; however, the Federal defendants are without sufficient indentifying data to form a belief as to whether any of these files relate to the similarly named plaintiffs. The Federal defendants are without knowledge or information sufficient to form a belief as to whether the Department of Defense in the past has ever compiled, maintained and disseminated any files or dossiers on the individual plaintiffs as alleged. . . ."

This paragraph requires explanation. It is stated that files on certain named individuals are currently being maintained. But it declares that these files do not contain enough data to identify the named individuals as plaintiffs. Thus, the Department is unable to state whether files or dossiers on the plaintiffs ever existed.

The Subcommittee would like to know the nature of the files mentioned in paragraph 23 that are currently being maintained on the named individuals. For what purpose are they being maintained and what is the nature of the information recorded? If they are files on civilians, what is the justification for the maintenance of such files under DoD Directive 5200.27? Finally, where are these files being maintained and by what subordinate agency of the Department of Defense?

By admitting in a document of public record that certain files are being maintained on individuals with the same names as plaintiffs, and yet neglecting to offer any clarification of what these files represent, the Department leaves this Subcommittee and the public with the impression that it may not have destroyed all of its domestic surveillance data in compliance with DoD Directive 5200.27.

In view of the continuing public concern with military and other kinds of political surveillance, I know you share my desire that every effort be made to dispel any lingering suspicions about continued military spying.

In this regard, I believe it is also necessary to clarify generally the status of any counterintelligence data now held by the Defense Department. The Subcommittee was assured in 1971 that all files in the Defense Department's possesion would be purged of any information gathered during the course of previous surveillance operations. The Department's pleading in *People Against Racism* v. *Laird* implies that at least an index file may still exist.

In your letter to the Subcommittee dated November 8, 1973, you included all previous unannounced inspection reports of the DIRC. In several instances, these reports indicated cases in which information regarding civilians and civilian organizations was being maintained in violation of the DOD Directive. The Subcommittee is interested in learning of all other violations of the DoD Directive which have come to the Department's attention since 1971 other than through the unannounced inspections of the DIRC. Furthermore, the Subcommittee would like the express assurance that these agencies most directly involved with intelligence gathering—namely, the Defense Investigative Service, USAINTC (Fort Holabird), and CONARC (Fort Monroe)—do not now maintain any files in violation of DoD Directive 5200.27. If such assurance cannot be given, the Subcommittee requests that it be informed of all specific exceptions and the justifications for them.

We would appreciate your prompt response to this inquiry.

With kindest wishes,

Sincerely yours,

SAM J. ERVIN, JR.,
Chairman.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., March 19, 1974.

Hon. SAM J. ERVIN, JR.,
Chairman, Subcommittee on Constitutional Rights,
Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of January 29, 1974, accurately summarizes the status of our correspondence, including the response we owe to the further inquiries you have made regarding Army activities in West Germany. Due to the voluminous nature of these inquiries, and because the answers are being prepared without benefit of the materials requested in our interim reply of January 8, 1974, it will be a while yet until the full response is ready. Rather than delay on this account, I am separately addressing your most recent inquiries.

To begin with, I would like to comment on what seems to me the concern behind the points you raise—whether the efforts by responsible officials in the Department of Defense have been effective in assuring that military investigative activities are limited to their proper and intended sphere. It is our belief that the excesses of the past have in fact ended; that investigative components have been thoroughly imbued with the restrictions placed on them; and that, with only negligible exceptions, such restrictions have been complied with, in spirit as well as letter.

I offer these assurances not as a matter of what we hope to see, but as an expression of the progress that has been achieved, backed by the personal participation of the top civilian leadership. It is to demonstrate this point that we have gone to the length of providing you with our internal reports of unannounced inspections. Without attempting to minimize the few discrepancies that have been disclosed, primarily involving the retention of old files, these reports are compelling confirmation of the degree of current compliance, which approaches 100%.

In view of your specific inquiry as to violations since 1971, let me emphasize that no significant deviation from the new policies has come to our attention from this or any other source. This includes the three agencies to which you refer.

You should realize that it will be an indefinite period before each and every pre-existing file in dead storage has been completely reviewed. Major documentary collections have been and, except for the moratorium instituted at your behest, are continuing to be screened and, if appropriate, either destroyed by means of systematic purging or through mandatory screening prior to acting on requests for individual files. Civil disturbance files, of course, have long since been completely destroyed.

Along the same lines, I should explain that under the present indexing system, names alone are not a sufficient basis for connecting a particular person with a particular file. For example, more than one hundred entries appear under a name as common as William Weiss. Whether even one relates to a party in a given law suit, there is no way of ascertaining, in the absence of additional identifying data such as a social security or military serial number. An examination of the files would not remove the doubt, since we would still lack the requisite identifying data on the party to the suit.

As I am sure you appreciate, it would be inappropriate for me to comment on matters before the courts, especially on an issue that will doubtless be clarified during the course of subsequent pleadings. The illustration points up, however, how improved communications between our respective staffs might help to avoid any misunderstanding in the future.

I am grateful for the opportunity you have given us to respond to these points and trust you will not hesitate to let me know in the event we can be of any further assistance, over and above the one pending reply.

Sincerely,

D. O. COOKE,
Deputy Assistant Secretary of Defense.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., March 6, 1974.

Hon. SAM J. ERVIN, JR.,
Chairman, Subcommittee on Constitutional Rights,
Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: We have recently received some inquiries from the media relating to Departmental policies concerning military investigative activities. Specifically, an inquiry relating to DoD Directive 5200.27 and activities of the Defense Investigative Review Council was responded to by me in my role as Chairman of the Defense Investigative Review Council.

Because I am aware of the Subcommittee's intense interest in this subject, and in conformity with our ongoing policies of full disclosure to your Subcommittee, you may be interested in the information we have furnished in the attached release.

Sincerely,

D. O. COOKE,
Deputy Assistant Secretary of Defense.

Attachments.

REPLY TO QUESTIONS SUBMITTED TO MR. D. O. COOKE, DASD (ADM), CHAIRMAN OF THE DEFENSE INVESTIGATIVE REVIEW COUNCIL (DIRC) BY ANDREW HAMILTON, JOURNALIST

BY ANDREW HAMILTON, JOURNALIST

Question 1: States the problem and requires no answer. It observes that in addition to responsibilities delegated by DoD Directive 5200.27 to the Chairman of the DIRC, he also "takes cognizance for OSD of the exercise of authorities delegated by others", in particular by the Secretaries or Under Secretaries of the military departments in the areas of Civil Disturbances and attending meetings and demonstrations. While the "cognizance" of the Chairman of the DIRC over these matters is not established by Directive, the Chairman would in fact concern himself with those matters, if and when they should occur.

Question 2: Regarding Paragraph V.E.: ("There shall be no covert or otherwise deceptive surveillance or penetration of civilian organizations unless specifically authorized by the Secretary of Defense or his designee.")

On how many occasions was authority granted for covert or otherwise deceptive surveillance or penetration of civilian organizations since the effective date of DoD Directive 5200.27 to the present?

Answer: Since March 1, 1971, this authority has been granted on extremely few occasions. It has been exercised no more than 3 times in any one year.

What was the nature and extent of the activity? By whom was it carried out?

Answer: In each special operation carried out, the activity involved a single source or informant who was a member of the organization who cooperated by furnishing information regarding its specific plans and activities which, prior to granting the authority to recruit the source, we had reason to believe were aimed at encouraging violations of regulations and disruption of military activities, or involved the planning of physical acts of sabotage or destruction of government property. Typically, the organization we sought information about presented a direct threat to DoD property, functions, or to the loyalty, discipline or morale of DoD personnel, by actively encouraging military personnel to disobey lawful orders or disrupt military activities.

During the course of the operations, which continued for periods of time ranging variously from about two weeks to two years, the informant would furnish information to agents of military investigative organizations who would evaluate and disseminate the information to interested command personnel and others with a need-to-know in the law enforcement and counterintelligence community.

These operations were carried out by either military or civilian persons acting under the control of agents of military investigative units in coordination with FBI and local law enforcement agencies. Each operation was authorized to continue for not more than one year, subject to re-approval upon submission of specific justification.

Question: How many operations are presently being conducted under this authority?

Answer: There is one (1) such operation now on-going.

Question: What organizations have been or are targets of such activity? What was the justification for each operation?

Answer: We will not reveal the specific identity of the organizations except to describe the general characteristics as set forth in answer to Question 2. In each case, approval was granted only after assurances were received that the information sought was not available from other sources. Revelation of the identity of organizations would jeopardize the safety and security of personnel involved, would unduly interfere with the success of these operations, or would unnecessarily impugn the motives of some of the members of the organization who many not have shared the aims and purposes of actively encouraging military personnel to disobey lawful orders and disrupt military activities.

Question: Did (or does) such activity include electronic surveillance pursuant to Paragraph V.D.

Answer: No. None.

3. Regarding paragraph V.G.: ("No computerized data banks shall be maintained relating to individuals or organizations not affiliated with the Department of Defense, unless authorized by the Secretary of Defense or his designee.")

Question: Are any computerized data banks on individuals or organizations not affiliated with DoD currently maintained by DoD or any military department or other DoD activity?

Answer: No. Nor have any requests to create or maintain any such files been submitted to the Chairman of the DIRC.

Question: Who maintains such files, where they are located, and what categories of individuals or organizations are subject to entry into these files? How extensive are the files (numbers of entries). Give examples of individuals or organizations on whom such files are maintained in each category.

Answer: See answer to question above. There are no such files in DoD.

Question: What criteria govern maintenance of non-computerized files on individuals and organizations not affiliated with DoD? What agencies maintain such files? How many separate files of this sort are there?

Answer: The criteria established by the Defense Investigative Review Council are set forth in the Attachment A (same as material printed on p—).

This information is maintained by Army Intelligence organizations, the Naval Investigative Service, and by Air Force Office of Special Investigations. The number of separate files is not known but is believed to be very limited. This belief is confirmed by regular unannounced inspections of field organizations. Each file must be reviewed annually and either destroyed or validated for continued retention because of its continuing "threat" status, or continued relevance to DoD functions.

4. Regarding paragraph VI.D.:

Question: What criteria have been established pursuant to this portion of the Directive regarding retention of certain types of information for more than 90 days?

Answer: The criteria are set forth in Attachment A.

5. Regarding Paragraph IV.C.:

(Questions omitted)

Answer: The answer to these questions are all set forth in paragraph 6 (pages 9–12) of Department of the Army letter dated 1 June, Attachment B (same as material printed on p.—) which spells out the entire scenario for dealing with civil disturbance matters. The DA letter of 1 June 1971, is the Army's implementation of DoD Directive 5200.27.

Question: On what occasions since March 1. 1973 [sic] to the present has this authority been utilized? How long (beginning and end dates) was each application? For what specific reasons and purposes was authority granted, and in what locales was the collection effort undertaken? How many intelligence or other personnel were employed in such efforts?

Answer: Since March 1. 1971, the authority to initiate active collection efforts by Army intelligence has never been invoked. Although several occasions have occurred when Army troops were alerted or prepositioned in anticipation of possible civil disturbance, on none of these occasions has an Army Intelligence collection effort been initiated. Information received from liaison contacts with the Department of Justice has proved sufficient in each of these circumstances.

During the national political conventions in Miami, the Department of the Army at the request of Attorney General Kleindienst loaned three analysts to the Department of Justice to work in their Information Evaluation Center in Miami, to analyze information being received from FBI ad local police sources. The dates of their participation were from 15–25 July 1972 and 15–25 August 1972.

6. Regarding Paragraph V.F.:

Question: On how many occasions have the military departments authorized collection efforts controlled by this paragraph? What were the occasions and what departments and services were concerned? Of what duration were the collection efforts?

Answer: None.

Question: On how many occasions have local commanders exercised the authority to collect information without prior approval under the terms of this paragraph? What are the particulars?

Answer: None.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., March 14, 1974.

Hon. SAM J. ERVIN, JR.,
Chairman, Subcommittee on Constitutional Rights,
Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: Attached for your information are responses the Department of Defense has recently given to questions presented by members of the press, relating to actions of the Defense Investigative Review Council.

These are furnished in the interests of keeping your Subcommittee fully informed of actions of the Depatrment in the area of investigations and keeping alive the dialogue with your staff which we feel is so necessary to ensure that they have correct information.

Sincerely,

D. O. COOKE,
Deputy Assistant Secretary of Defense.

Attachments.

RESPONSE TO QUESTIONS SUBMITTED BY TONY DE STEFANO OF NEWSDAY, UNDER DATE OF MARCH 5, 1974

Query 1: Does the Defense Investigative Program [of DoD Directive 5200.26] encompass all worldwide units of the Defense Department?

Answer: Yes, however, the policies and prohibitions contained in DoD Directive 5200.27, attached, only apply to Defense components within the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and U. S. territories and possessions.

Query 2: How many inspections and reviews have been carried out by the DIRC since 1971 and what has been their breakdown on any violations detected?

Answer: Fourteen unannounced inspections have been conducted throughout the United States (including Hawaii and the Canal Zone) by the DIRC principals and staff. In addition, each military department has conducted a considerably larger number of internal DIRC-oriented inspections of their investigative and related security organizations. The unannounced DIRC inspections have revealed *no* operational violations of DIRC policies and prohibitions; that is to say, DIRC inspections within the geographic limits of DIRC prohibitions have revealed no instances which violate the basic policies on acquisition of information on persons not affiliated with the DoD. The kind of discrepancies noted by the inspection team have related to record keeping, wherein files believed to have been screened and purged still contained some questionable material relating to civilian organizations or individuals. Prompt corrective action was taken on the spot. Other discrepancies have been technical violations of the record keeping systems fashioned by the military departments after 1971 for annual review of all investigative record holdings in field installations. These discrepancies were largely unintentional and resulted from imperfect administration or honest misinterpretation. Moreover, they are regarded as harmless error but nevertheless were subjected to prompt corrective action so that the record keeping system will be fine-tuned and made as fool-proof as possible. These unannounced inspections are continuing. Their overall conclusions point to a virtual 100% compliance with DoD Directive 5200.27 policies by all DoD components.

Query 3: Within what units have DIRC investigations been centered? (example: 902nd MI Groups, CONUS or 66th MI Group USAREUR)

Answer: The DIRC inspections have concentrated on investigative elements and related command elements (Post s-2's, Security Police, etc.) within the 50 states, including the Canal Zone and Hawaii. DIRC prohibitions do not apply to West Germany where the 66th MI Group is located, or to any overseas locations. As indicated above, they do apply to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and U. S. territories and possessions. These inspections have covered all three military departments, including the Marine Corps, as well as the Defense Investigative Service, a newly formed Defense agency.

Query 4: What is the circulation of DIRC reports? How frequently is Congress supplied with information from DIRC reports?

Answer: Reports of unannounced DIRC inspections are furnished to principal members of the DIRC and members of the DIRC Working Group. This means that the Under Secretaries of each military department, the Director, Defense Intelligence Agency, the Deputy Assistant Secretary of Defense (Administration), the General Counsel of DoD, and the Director, Defense Investigative Service, regularly receive copies of these reports. The reports are internal memoranda of the Department, contain findings and recommendations of the Inspecting Team, and have not been released to the public. Nevertheless, copies of those completed as of that date were furnished to the Chairman of the Senate Subcommittee on Constitutional Rights, Senator Ervin, in November 1973. Any other Committees of the Congress which express an interest in this matter would be furnished similar information. Basically, the reports show full compliance with the investigative policies initiated by Secretary Laird in early 1971.

RESPONSE TO FURTHER INQUIRIES OF ANDREW HAMILTON, JOURNALIST, MADE TO OSD–PA ON MARCH 8, 1974

Query 1: Can he receive copies of DIRC inspection reports?

Answer: No. These are internal documents intended solely for the use of policy makers who are members of the DIRC and their staffs, and therefore exempt from release under the Freedom of Information Act.

Query 2: Are these classified? How many are there?

Answer: They are not classified but bear the protective markings FOR OFFICIAL USE ONLY which means they are not to be released outside official channels. They have been furnished to the Ervin Subcommittee on Constitutional Rights under the same restrictions. Counting the most recent inspection, there are 14 such reports.

Query 3: Can he get an account of the U.S. military intelligence activities during 1971–72 in the Canal Zone; believe these involved surveillance of non-DoD organizations and file keeping of persons in these organizations?

Answer: Initially, in 1971, the U.S. Army in the Canal Zone did not believe that the restrictions of DoD Directive 5200.27 were applicable to their activities within the Zone, because of other responsibilities assigned to U.S. Army Intelligence for certain internal security investigations under the terms of the Delimitations Agreement with the FBI. In early 1972, this matter was clarified for the Army; they were informed clearly that DoD Directive 5200.27 *did* apply to the Canal Zone, their Delimitations Agreement responsibilities notwithstanding. Thereafter, they took immediate action to bring their record retention practices into conformity. This did not require any termination of covert operations or so-called "surveillance" of civilian organizations within the Canal Zone because no such operations were underway. It did require substantial screening and purging of files which had been accumulated over a period of years. This purging was accomplished promptly once adequate policy guidance was given and the records are now in full compliance in the same manner as comparable files of Military Intelligence units in the United States.

Query 4: What steps were taken to bring these activities (special operations) under control of 5200.27?

Answer: See answer above. It is emphasized that there were no special operations under way in 1971 or 1972 so that there was no need to bring any under control. There is now no uncertainty, however, that should any command in the Canal Zone wish to engage in a special operation involving a civilian organization within the Canal Zone, it would be necessary for them to seek approval for such an operation through channels to the Under Secretary of the military department who would, if he agrees, seek permission for such operation from the Chairman of the DIRC. No such requests have been submitted by Defense Components within the Canal Zone.

Query 5: If such operations ceased under 5200.27, how is the information now being gathered, if it still deemed necessary for the security of the Canal Zone?

Answer: Such operations did not cease under 5200.27 because none were underway, and units within that command have not seen fit to request any since DoD Directive 5200.27 became effective in March 1971.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., April 23, 1974.

Hon. SAM J. ERVIN, JR.,
Chairman, Subcommittee on Constitutional Rights,
Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: Having had an opportunity to read your opening statement presented on the first day of the hearings now being conducted by the Subcommittee on Constitutional Rights, we noted several assertions in your statement which require correction or at least some clarification.

We have taken the liberty of providing you with the attached quotes from your statement and our comments thereto which we believe will help to set the record straight. We would appreciate your including these comments in the record of your current legislative hearings.

Sincerely,

D. O. COOKE,
Deputy Assistant Secretary of Defense.

Attachment.

COMMENTS TO OPENING STATEMENT OF SENATOR SAM J. ERVIN, JR., APRIL 9, 1974

". . . the Subcommittee's report did indicate, however, that in 1971 the Defense Department began to restrict its domestic intelligence operations to the gathering of information essential to the military mission."

COMMENT: The Department of Defense actually, as you were informed in the statement of Robert F. Froehlke, Assistant Secretary of Defense (Administration) to this Subcommittee on March 2, 1971, began to revise and constrict the Army civil disturbance mission in early 1969. In fact, the Army's Civil Disturbance Information Collection Plan of May 2, 1968, was totally rescinded on June 9, 1970.

"On March 1, 1971, in the course of our hearings, the Defense Department issued a directive which sought to put an end to the military surveillance of civilians. . . ."

COMMENT: It is true that Department of Defense Directive 5200.27, subject: Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense was published March 1, 1971. This however, was the summary document enunciating the policies of the Secretary of Defense previously issued to the components by orders and messages, dated in June 1970 as indicated in Mr. Froehlke's March 2, 1971 statement to this Subcommittee.

"(2) The Subcommittee staff has found that the majority of units inspected by DIRC possessed files on civilians or civilian organizations which either were flatly prohibited by the DoD Directive or which, if authorized, were being held beyond the time limitations provided by the DoD Directive, or DIRC retention criteria."

COMMENT: This is not true. Record keeping discrepancies were only found in a *minority* of units, and none involved a conscious or deliberate intent to violate the directives ("flatly prohibited"). There were some few honest misinterpretations of the rules which the DIRC team has assured are now corrected.

"(4) . . . the two inspections which revealed the most egregious departures from the DoD Directive were classified "Confidential."

COMMENT: Only one of the fourteen DIRC inspection reports is classified "Confidential," and that one has only two paragraphs so designated. The two classified paragraphs do not show any egregious departures from DIRC policies but rather note the inspecting team's awareness of other military missions being accomplished outside the purview of DIRC. The inspection team findings are fully recorded in the remaining fifteen unclassified paragraphs. The "discrepancies" reported in that related solely to the retention of old records.

"There have been only fourteen inspection trips since 1971."

COMMENT: It is correct that there have been, to date, fourteen DIRC inspection trips in which a DIRC principal participated. Each inspection has covered from about ten to twenty separate investigative or command locations. Additionally, the Service Under Secretaries, Service Inspectors General, and command elements of investigative units have maintained a continuing program of internal inspections. In the most recent Defense Investigative Program Annual Report submitted to the Secretary of Defense, the Under Secretaries of the military departments reported a total of 48 DIRC-oriented inspection visits conducted under their auspices in Fiscal Year 1973.

". . . the Defense Investigative Service has undertaken three "plumber" operations to determine the sources of leaks to the press of classified defense information. . . . there appears to be no limitation on such investigations provided by the DoD Directive, even of they were to spill over into the civilian community."

COMMENT: The Department of Defense engages in no "plumber" like operations. The Defense Investigative Service is totally regulated by the investigative policies of the Secretary of Defense, and must conform to, and are inspected under, DIRC directives. Each of the instances of leaks of classified defense information to the press investigated by us indicated some failure in the handling and safeguarding of classified information within the Department of Defense. Each such investigation was limited and was required by EO 11652, dated March 8, 1972.

". . . a military intelligence unit in San Diego, which prior to the decision to move the GOP convention from San Diego to Miami Beach, had begun to build its files on dissident groups in the area in contemplation of liaison responsibility with the Secret Service at convention time."

COMMENT: This unit performs criminal and counter-intelligence investigative actions for its parent service. Members of this entire investigative organization who were skilled in the use of hand weapons, and trained under US Secret Service distinguished visitor protection training plans, had been borrowed by the US Secret Service for past presidential and presidential-candidate protection duties. Under the assumption they would again be called upon to assist, they attended law enforcement meetings at which San Diego and Federal authorities discussed the local situation from a possible dissident action point of view. Write-ups of these meetings, together with handout material, had been obtained and filed. As a result of the DIRC visit, this action was terminated. Their role was envisioned by them as presidential candidate protection, under US Secret Service control, not in anyway as an intelligence collecting unit.

"In a case which took place in Prince William County, Virginia, shortly after the promulgation of the DoD Directive, military intelligence agents were assigned to assist local police by posing as members of a drug ring. Ostensibly, they were 'loaned' to local police because military personnel were thought to be involved."

COMMENT: Prince William County, Virginia polite officials notified the Marine Corps, Criminal Investigation Division, in Quantico, Virginia, that cars bearing Marine Corps decals had been observed at an off base location suspected of involvement in drug traffic. Criminal investigators, not "intelligence" agents, assisted the police in their investigation and did perform undercover work. Twenty-nine convictions, though none on Marines, were subsequently obtained. These were upheld by the courts, and found not to violate the Posse Comitatus Act. As a follow-on action, the DIRC studied this investigative involvement, and ultimately expanded the written policy of DIRC to include firm guidelines as to the limited instances and degree of assistance and cooperation permissible between military and civil police authorities.

SENATE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
Washington, D.C., May 6, 1974.

Mr. D. O. COOKE,
Deputy Assistant Secretary of Defense,
The Pentagon,
Washington, D.C.

DEAR MR. COOKE: Thank you for your letter of April 23, 1974, asking that certain comments of the Defense Department regarding my opening statement at the hearings on S. 2318 be printed as part of the hearing record.

I shall be pleased to have this done.

With one exception, I see no point in my commenting further on the matters you raise, since they appear only to clarify rather than refute my remarks. You do point out that I was in error in saying that a majority of units inspected by DIRC were in possession of information barred by the directive or DIRC retention criteria. You are correct. What I should have said was that a majority of inspection reports revealed such violations. Each inspection report, of course, covered several units.

I appreciate having your clarifying comments.

With kindest wishes,

Sincerely yours,

SAM J. ERVIN, JR.,
Chairman.

Office of the Secretary of Transportation,
Washington, D.C., May 13, 1974.

Hon. Sam J. Ervin, Jr.,
Chairman,
Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

Dear Mr. Chairman: The Department of Transportation would like to take this opportunity to offer to the Committee our views on S.2318, a bill

"To enforce the first amendment and fourth amendment to the Constitution, and the constitutional right of privacy by prohibiting any civil or military officer of the United States or the militia of any State from using the Armed Forces of the United States or the militia of any State to exercise surveillance of civilians or to execute the civil laws, and for other purposes."

The bill would add a new section, 1386, to chapter 67 of title 18, United States Code, to prohibit the use of the armed forces of the United States, with certain exceptions, for investigation or surveillance of any person not a member of the armed forces, or any civilian organization, regarding their beliefs, associations, or political activities. An amendment to chapter 171 of title 28, United States Code, would authorize individuals to bring a civil action for damages and obtain other equitable relief for violation of the proposed section 1386 of title 18 and to permit class actions to enjoin those activities. The bill would also amend the Posse Comitatus Act (18 U.S.C. 1385) to bring the Coast Guard, Navy, and Marine Corps within the coverage of that statute.

Within this Department, the Coast Guard conducts investigations relative to our statutory responsibilities which would be adversely affected by the bill. These investigations are conducted in the following areas:

a. investigations to assist the Coast Guard in the performance of its powers, duties, or functions under the general authority of the Commandant (14 U.S.C. 93(e));

b. Criminal investigations under the implied authority of the Uniform Code of Military Justice (10 U.S.C. 831);

c. investigations relating to the general law enforcement and security responsibilities of the Coast Guard (14 U.S.C. 2, 89, and 91, and 50 U.S.C. 191);

d. investigations regarding civilian personnel security conducted under Executive Order 10450;

e. surveillance of vessels under sections 101(4) and 101(8) of the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*);

f. special surveillance over certain foreign vessels which enter United States ports, in accordance with Executive Order 10173 and National Security Decision Memorandum 82 (as authorized by 50 U.S.C. 191);

g. investigations pursuant to the administration of the laws relating to merchant vessel personnel (46 U.S.C. 214, 221–249, and 50 U.S.C. 191); and

h. investigations pursuant to the review of marine casualties (33 U.S.C. 1223 and 46 U.S.C. 239).

Due to the Coast Guard's role as an organization with both civil and military responsibilities, the impact of this bill on the Coast Guard differs substantially from its impact on the other armed forces. If the Coast Guard is to effectively meet its responsibilities, it is essential that the authority for these investigatory and surveillance functions not be unduly restricted. We, therefore, object to the bill insofar as the prohibitions proposed therein would be applied to the Coast Guard. If S. 2318 were to be considered favorably, we would recommend that section 2 be amended to exclude the Coast Guard by using a phrase other than "armed forces" which is defined in the bill and 10 U.S.C. 101(4) as including the Coast Guard.

Section 5 of the bill would expand the scope of the Posse Comitatus Act to include the Coast Guard. We do not object to this change. It would not inhibit the Coast Guard from carrying out its historic law enforcement duties as they are specifically authorized by Acts of Congress, including 14 U.S.C. 89; and therefore fall within the exception to 18 U.S.C. 1385.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Committee.

Sincerely,

Rodney E. Eyster,
General Counsel.

OTHER MATERIALS

MATERIALS RELATING TO MILITARY SURVEILLANCE PRIOR TO 1970

DEPARTMENT OF THE ARMY,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C.

MEMORANDUM FOR THE SECRETARY OF THE ARMY—THE UNDER SECRETARY OF THE ARMY

Subject: Review of Civil Disturbance Intelligence History, Prepared by Robert E. Jordan, III, General Counsel, Department of the Army

This paper is designed to review what I have been able to glean concerning historical aspects of our civil disturbance intelligence collection efforts. It draws heavily on two principal research efforts: (1) a chronology prepared by the ACSI Task Force in preparation for the Ervin hearings; and (2) a 71-page double-spaced Memorandum for Record prepared by Milton B. Hyman, formerly one of my assistants, who was brought back in January as a consultant in order to review our records. The two resource papers differ somewhat in approach, for understandable reasons. The Staff effort draws heavily on the records available to the Army Staff, while the Hyman paper draws heavily on the files of ASG, personal files of Under Secretary McGiffert and Under Secretary Beal, and the files of the Office of General Counsel. Naturally, there is a substantial degree of overlap in the materials available in staff and Secretariat files, but there are items found in each which were not located in the other.

A review of the documents in historical perspective reveals two recurring themes which, more than anything else, explain what we did and what we failed to do. First, it is clear that although the Staff can say that information was available to the Secretariat indicating the nature and the scope of the civil disturbance intelligence program, the overall thrust of Staff presentations was to stress the fact that most of the information we were receiving was obtained from civilian agencies through liaison. At one point as I shall note, we were even told that no civil disturbance "penetration" operations aimed at civilian organizations were being conducted. While it is clear that we should have recognized that some overt and covert agent activity was taking place, it is also fair to state that the Staff's approach diverted our attention away from any careful examination of the way information was collected. Second, references appear throughout the documents indicating an underlying belief that other agencies—particularly the FBI—should have been doing what we were forced by circumstances to do. In fact, one of the primary reasons we did not drastically curtail our activities in early 1969 was the unwillingness of the Justice Department to accept responsibility in this area. Even earlier, however, it is clear that we were frustrated at the inability of civilian agencies to respond to what was clearly felt to be an important need for information.

The earliest paper found in the Secretariat files was dated 31 July 1967, and is referred to as the Counterintelligence Research Project, Civil Disturbances CONUS. It was prepared by an element of OACSI then known as the CIAB (Counterintelligence Analysis Branch). The origin of the paper is somewhat uncertain although a 24 January 1969 ACSI paper indicates it was generated as a result of pressures during the Detroit disturbances. One recollection Mr. Hyman and I have of the paper is that we were concerned from the outset with its some inflammatory language, which seemed to draw upon the worst of the prose style of some of the FBI subversive reports. Mr. Hyman remembers efforts at that time to tone down the rhetoric in these reports. This paper is the apparent precursor of the yellow-covered reviews of personalities and organizations which were published several times later in 1967, 1968, and early 1969, which have generally been referred as the the "Compendium."

A Memorandum for Record of 27 July 1967, apparently prepared in the Office of the Under Secretary, records the creation of a special task force, appointed by Secretary McNamara, and headed by Under Secretary McGiffert.

The task force met immediately from 4:00 to 8:00 on the afternoon and evening of 27 July. It contained representatives from Army, White House, D.C. Government, Justice, National Guard Bureau DCSOPS, ASD(PA), and elsewhere. The subject of intelligence appears near the bottom of the first page, and carries over to the second page. There is talk about the need for coordination of various agencies, including the military. The following statement is made: "Considering that Washington is a seat of Government it is apparent that the White House and successive lower echleons will all want rapid and complete information. . . . The entire local intelligence community must review plans and procedures to assure initial information flows rapidly into Metropolitan Police Headquarters and that rapid dissemination can be made from there."

A copy of a Memorandum for the Under Secretary of the Army found in the file and identified through other sources as being in early December 1967 is the first of a number of examples of information furnished to the Army Secretariat which strongly suggests that the Army relies primarily on liaison activities for intelligence collection. The first paragraph of this memorandum describes the role of Army intelligence in collecting civil disturbance information as "peripheral except when the disturbance directly affects the Army's mission or facilities." The paragraph goes on to say "Both legal and practical considerations mandate Army intelligence's mission into the domestic disturbance field and make it essentially dependent on the investigative efforts of other Federal agencies." Other quotes from this memorandum are as follows:

"Army intelligence maintain extensive liaison with all other Federal agencies concerned with the domestic picture and, in particular, with the FBI."

"Army intelligence is not engaged in any concerted investigative effort to determine the routes of domestic discontent or the channels it will follow. The quantity and quality of third agency reports is sufficient to allow proper and timely analysis of the domestic situation so that commanders in the field will be properly informed at all times."

I find in the files a memorandum which I wrote on 24 October 1967 to Under Secretary McGiffert, commenting on lessons learned during the Pentagon demonstration. One of the matters I emphasized was the difficulty that we had knowing precisely what was going on at certain key stages of the demonstration. Although the principals involved in the demonstration planning were located in the Secretary's conference room just inside the Mall Entrance, with 9 or 10 closed circuit TV monitors at their disposal, it was still difficult to follow what was going on outside. Some of the reports coming in through the Intelligence Command channels were simply too late to be of value, and I had taken to going outside and making my own estimate at frequent intervals during the height of the difficulty.

A memorandum from the Military Assistant to the Under Secretary to the Secretary of the General Staff, dated 13 December 1967, is perhaps the first example of how a close Secretariat interest in the civil disturbance situation may have stimulated intelligence collection efforts. The Military Assistant comments that Mr. McGiffert was favorably impressed with the quality of the work in a 5 December 1967 memorandum on the civil disturbance situation. The Staff is tasked to give a bi-weekly briefing beginning in early January 1968 on "Prospective Civil Disturbances, Peace Protects, and Civil Rights Protests in Calendar Year 1968." The first summary should include a resume of Martin Luther King's announced plans for a Washington, D.C. protest in the spring." One should note that, in particular, the use of the term "prospective" in relation to civil disturbances, and the identification of peace protests as a subject of interest would tend to involve Army intelligence collection activities in matters beyond actual or clearly impending civil disturbances.

Following the Detroit disturbance, the Chief of Staff of the Army appointed what was referred to as the "Hennessey Task Force," after its Chairman, Brigadier General John Hennessey. Its job was to address the entire civil disturbance problem and make recommendations concerning necessary Army actions. The recommendations of the Task Force include a number of items relating to intelligence. One of the recommendations, which was approved by General Johnson, was for the development of EEI (Essential Elements of Information), which were said to be necessary to produce intelligence which will "serve to indicate *potential* areas of civil disturbances." Conclusion No. 59 of the Task Force was as follows:

"Continuous counterintelligence investigations are required to obtain factual information on the participation of subversive personalities, groups or organizations and their influence on urban population to cause civil disturbances."

In the recommendations section relating to the foregoing conclusion is a recommendation that the Intelligence Command "continue its efforts towards this end." Two things are important here. First of all, there is the indication that this was not considered a new mission for the Intelligence Command, witness the word "continue." Second, the phrasing of Conclusion 59 was sufficiently broad and imprecise, in and of itself, to launch the Army into the area of seeking out causes of disturbances and the role of "subversives", that is, sufficient to generate all of the problems which subsequently ensued.

The breadth of Conclusion 59 was reflected in certain of the essential elements of information which were developed by the Hennessey Task Force and which subsequently became part of a new DA Civil Disturbance Plan approved in early 1968.

I found in the files a memorandum dated 10 January 1968 which summarizes a meeting which I attended in the White House with Deputy Secretary of Defense Nitze. The meeting was in Joe Califano's office and Ramsey Clark and Warren Christopher were both present. The basic reason for the meeting, according to Califano, was that the President wanted to be certain that the civil disturbance problems were under control and receiving proper attention. There was a discussion of the intelligence problem, and Attorney General Clark noted that "every resource" was needed in the intelligence collection effort. However, he noted that there were problems of too much volume, and asked that the Department of Defense screen out our incoming intelligence and send only key items to the Department of Justice. The significance of this sort of item is that it gives a high-level stamp of approval and recognition to intelligence collection efforts in the civilian field by Army intelligence.

In February 1968, the DA civil disturbance plan developed by the Hennessey Task Force was published. Subsequently, the plans of subordinate commands were prepared. The MDW Plan, called "Cabin Guard", was dated 19 February 1968. It contained some EEI that do not correspond to those in the Hennessey Task Force report.

The files contain a memorandum of 1 April 1968 from Under Secretary McGiffert to the Secretary of Defense. By this time, of course, Mr. Clifford had become Secretary of Defense, and one purpose of the memorandum was to bring him up-to-date on the Army's method of operations in the civil disturbance field, a subject with which Secretary McNamara had been familiar. The paper was prepared in the Office of General Counsel. The section on intelligence coordination notes Justice's over-all coordination responsibility. It also notes that Federal forces come in during the later stages of the civil disturbance and states that our intelligence efforts are "primarily directed toward monitoring and evaluating situations which may lead to requests for Federal assistance and channeling information to State and local officials." There is nothing in this memorandum which is particularly revealing with respect to the method of collection of intelligence. There is, however, a reference to "liaison" activities with other intelligence collection agencies.

On 1 April 1968 appeared the first edition of the so-called "Counter-intelligence Research Project, "Civil Disturbances—CONUS–68." This is the document which has, in its various editions, been referred to as the "Compendium."

On 13 April 1968, Under Secretary McGiffert addressed a memorandum to the Chief of Staff which was the basis for setting up the Directorate of Civil Disturbance Planning and Operations. This memorandum also set up the Civil Disturbance Steering Group With OSD and other service participation. Actually, this memorandum was the precursor of the DoD Directive which took some time to staff and did not come out until early June. Among the functions which were listed for the new Directorate was "developed intelligence reporting procedures to provide information on civil disturbances occurring or imminent." The language "occurring or imminent" would appear to limit intelligence activities to actual disturbances, for those situations in which the potential was rather clear. However, if one includes in the term "civil disturbance" a rather small disturbance in a single city, then a wide range of activities might be viewed as relevant to imminent civil disturbances. When the DoD Directive came out in final form on June 8, it assigned to the Secretary of the Army the responsibility, among other things, of informing the Secretary of Defense of unusual military resource requirements "actual or potential." I doubt that anyone thought very much at the time about the kind of intelligence activities which might be generated by use of such terms as "imminent" or "potential." The memorandum also imposed a requirement to brief the Steering Group prior to 4 May 1968 on four topics. The topics included Task Force organization and planning objectives, troop and airlift resources, training and equipment plans, and "intelligence matters."

One occurrence which cannot be overlooked in the understanding of the development of the civil disturbance intelligence situation is the great emphasis and concern beginning in late 1967 and continuing all through early 1968 on information concerning the so-called Washington Spring Project, which is more familiarly known as the Poor People's Campaign, and which resulted in the creation of Resurrection City.

A 12 April 1968 letter from Under Secretary McGiffert to Warren Christopher, Deputy Attorney General, was wholly concerned with civil disturbance intelligence problems. The Under Secretary urges Christopher to set up a board to deal with civil disturbance intelligence in order to improve the effort. Significantly, the letter refers to the FBI and the Intelligence Command as "the major intelligence collectors providing the raw materials for use at the Washington level." However, the letter goes on to say that the two agencies "rely heavily upon reports from local police whose intelligence-gathering systems vary widely both as to operating philosophies and efficiency." This letter is perhaps another bit of circumstantial evidence indicating what I believe was the prevailing view in the Secretariat at that time, namely that the Intelligence Command's field activities were overwhelmingly of a liaison nature. This feeling was stimulated by such papers as the December 1967 ACSI paper which was referred to earlier. Only three days later, 15 April 1968, we find a memorandum for record prepared by the then Vice Chief of Staff, General Haines, of a White House meeting attended by Califano, Attorney General Clark, Deputy Attorney General Christopher, Dave McGiffert, General Harold K. Johnson, General Haines, Mayor Washington, Deputy Mayor Fletcher, and Pat Murphy, then Director of Public Safety for the District. Warren Christopher was assigned the responsibility to head a committee to make recommendations for improved coordination of the intelligence effort relating to civil disorder in the District of Columbia. The Army was to be represented on the committee.

At this stage it might be well to point out that a recurring theme within the Army was the need to get Justice to do more in the intelligence field, and dissatisfaction with Justice's current efforts. Justice was handed the ball in April 1968, but nothing significant ever really came of that assignment. It was given to Walter Yeagley, Assistant Attorney General for Internal Security, who did hardly anything with it. The unit which was set up within Justice was never properly staffed or funded, and its head was of doubtful competence but with the undoubted lack of drive and force. Thus we find on 26 April 1968 the then ACSI, General Yarborough, writing directly to the Attorney General Clark, raising a number of questions about how the Justice Department was proceeding, or proposed to proceed, with its part of the intelligence collection and analysis effort. The response is a wishy-washy and rather uninformative letter of 15 May 1968 from Warren Christopher.

The Justice inadequacy theme appears again in a 26 June 1968 memorandum from Dick Balzhiser, a White House Fellow who was serving as Executive Secretary of the Civil Disturbance Steering Group, to Dave McGiffert. Despite the assignment of responsipilities at the White House in April, Balzhiser reports that Paul Bower, who was Warren Christopher's Principal Assistant in the Civil Disturbance area, was unaware of any action to form an intelligence committee.

One of the most significant documents in the history of our civil disturbance intelligence efforts is the 2 May 1968 Department of the Army Civil Disturbance Information Collection Plan. This plan contained long lists of indicators of potential violence and sought to evoke collection activities by a wide range of agencies, some of whom were outside the Department of the Army, or for that matter, Department of Defense. The Justice Department, for example, received ten copies, spread among various of its elements. The plan invited the addressees to forward information on any subjects covered by the plan. The transmittal memo noted, however, that "no active investigation is requested."

Paragraph 4 of the plan, which described the "situation", contains an interesting limitation:

"USAINTC personnel will not be directly used to obtain civil disturbance information until specific direction to do so has been received from Headquarters, DA. Pre-disturbance information to satisfy Army requirements will be obtained by drawing on other Federal as well as state and local sources which secure such data in the course of carrying out their primary duties and responsibilities."

I would like to be able to say that I relied on this statement as an assurance that overt collection activities other than liaison were carefully controlled. However, I do not recall that the Information Collection Plan was coordinated with this office, and although the Secretary of the Army is indicated as receiving two copies, no distribution for the Office of General Counsel is specifically indicated, and Milt Hyman and I do not recall seeing the plan until late 1968. By that time, we were trying to develop a policy which would have required a wholesale revision of the plan.

situation to which it pertained, it is difficult to say that such calls worked a extensive overt collection activities during 1968 and 1969 in the face of this very clear limitation in the DA plan. I have talked with Colonel Downie of ACSI, seeking to understand how we could have gotten into a such a broad overt collection business with this limitation on the books. According to Colonel Downie, General Blakefield, who was CG of the Intelligence Command during most of the relevant times, has quite candidly said that this provision was simply ignored. His justification for doing so was that he repeatedly called Dave McGiffert and General Johnson (and sometimes, he asserts, by both at the same time) telling him in effect to get the Intelligence Command off its rear end and out collecting intelligence on some potential or actual disturbance of current interest to them. While such a phone call would constitute DA authority to collect overtly in the particular situation to which it pertained, it is difficult to say that such calls worked a blanket exemption from the limitations in the Collection Plan. In short, we simply do not have a very good explanation.

I ask the reader of the memorandum to store in his mind this information on the May Collection Plan for later reference when I talk about the McGiffert memorandum of 5 February 1969. If in fact the Intelligence Command had been following the limitations in the Collection Plan, much of the concern expressed in the McGiffert memorandum, and large parts of the Staff's response to that memorandum, would have been irrelevant.

A 28 June 1968 memorandum from Under Secretary McGiffert to the Chief of Staff laid on a requirement for a briefing at every meeting of the Steering Group covering "significant disturbance activity in the nation since the last such briefing." This is the kind of requirement which the Staff points to, not without justification, as stimulating the intelligence collection efforts. Of course, this memo, like all the others we have identified, says nothing about the method of obtaining the information to be used in preparing the briefing.

A memorandum of 15 July 1968 from the Acting ACSI to the Under Secretary of the Army discusses civil disturbance reporting. It apparently responds to a verbal inquiry about a week earlier, and the exact nature of the verbal inquiry is not clear. However, the memorandum talks about how Army Intelligence gets its information. The memorandum says "raw reports are received orally and in written form from the field offices of the FBI." At the end of the memorandum is a statement that FBI raw and processed reports, along with FBI studies, are the "principal source material" for the Army output on the subject of civil disturbances. The memorandum states that between 70 and 80 percent of the material available for DA use comes from the FBI. I think most of us assumed that the other 20 to 30 percent represent principally the liaison activities with local police departments and other agencies.

I cannot say that this memorandum stimulated that view on my part, however, for I do not believe I saw the memorandum at the time.

A memorandum of 23 July 1968 from Dave McGiffert to the Secretary of Defense responds to questions which had been asked by the Secretary of Defense concerning levels of civil disorders in 1967 and 1968 on a comparative basis. The information furnished dealt principally with National Guard deployments. The memorandum indicates that the FBI had been asked for information relating to the number and types of police forces involved and the intensity of the orders it developed. The Bureau had advised that this information was not readily available and would require a manual search of their files, occupying many weeks.

A 29 July 1968 memorandum for SGC from Colonel Bush, Executive to the Under Secretary, indicates that the Under Secretary has been receiving intelligence briefings on civil disturbance six days a week. The memorandum alters the schedule, requiring briefings on only three days of the week, but indicates that there is continuing interest in a considerable amount of detail about the national civil disturbance situation.

In August 1968, the after-action report for the April disorders was published. Intelligence is dealt with an Annex M. The need for an intelligence board is raised again, and there is a reference to the need for a data base available to all concerned Federal agencies. The discussion of the collection of information from local police strongly, although implicitly, suggests that the Army relies almost exclusively on local law enforcement agencies for civil disturbance information. The recommendation which flows from the discussion is that the Army investigate using other collection assets within the civilian community, because of a feeling that the local police tend to reduce their intelligence reporting in times of crisis as their capabilities are overtaxed. One must keep in mind that this report deals with a period of actual disturbance, but since the report so strongly suggests reliance on local police even during a time of actual disturbance, most readers would probably assume that there would be even more reliance on such sources during times of comparative calm.

A 21 August 1968 memorandum through the Vice Chief to the Under Secretary of the Army reports on actions taken to pursue the after-action report of the April disorders. It is signed by General Mather, then DCDPO. The DA action on the recommendation that increased use be made of collection assets within the civilian community produced the DA Civil Disturbance Information Collection Plan tasking nine major DA collection agencies, four DoD agencies, and eight non-DoD agencies with "contacting, *through liaison*, independent reporting sources (e.g., fire and police chiefs, city managers), to obtain pertinent information during pre-disturbance and disturbance periods." The action comment goes on to say that "this collection to be done primarily by the FBI and the U.S. Army Intelligence Command with the other military and non-military agencies doing only that liaison and collection within legal boundaries of pertinent Executive Directives and the Delimitations Agreement." I believe that a fair reading of this comment would suggest that, just as most people in the Secretariat thought was the case, our intelligence activities were overwhelmingly liaison in nature. This is but another example of formal staff papers emphasizing liaison.

However, to put things in perspective, I should note that on the second page of the comments on the actions taken, there was discussion of the problem which had been identified respecting the reliability of certain information received. It was indicated that thereafter a new spot report format was to be used in which the military intelligence reporting element was to comment on the source of the information, and evaluate both the source and the information. One of the examples given of a possible reporting element was that of an MI agent reporting from on-the-scene. After this time, presumably a review of the spot reports would have indicated the extent of non-liaison activities by Intelligence Command personnel. However, because of the nature of the Army Staff system, raw material of the spot report variety, particularly in pre-disturbance times, would not normally go directly to the Secretariat. I would have to review a cross-section of spot reports from this period to refresh my memory as to whether I was seeing very many of them at that time. I doubt it, since I generally asked someone else in my office to screen out most of the unimportant civil disturbance material, and I am not even sure we were receiving it at all. I don't know, off-hand, how much information the Under Secretary's office was receiving at that time of the spot report nature.

One important memorandum which is likely to be mentioned is a 28 September 1968 memorandum for the Secretary of the Army from the Deputy Secretary of Defense, Mr. Nitze. The Army had requested a manpower ceiling increase of 167 spaces, justified on the basis of its increased intelligence responsibilities relating to civil disturbance. DIA had recommended approval, but an OSD review group, with DIA dissenting, had disapproved the PCR. Mr. Nitze stated that this was done because of "reservations regarding the extent of Army involvement in domestic intelligence activities and the lack of justification for such a manpower increase." Mr. Nitze did, however, authorize additional 100 spaces for Army intelligence, provided they were made available from existing resources.

Mr. Nitze specifically noted the significant civil disturbance responsibilities and the increased demand for intelligence support. He noted that this had been primarily the result of the failure by other Government agencies, particularly Justice, to carry their share of the burden. He encouraged the Army to continue to push Justice to greater involvement in the area. He also suggested that any renewal of the Army request for additional personnel ought to be accompanied by substantially greater documentation of the need, not basing the estimate on the requirements of peak periods of activity. I believe that this document in some ways represented a watershed, since from about the time of the memorandum my staff and I began to question the nature and extent of Intelligence Command involvement in the civil disturbance collection field. This questioning was to culminate in the February 1969 memorandum from Under Secretary McGiffert to the Staff which attempted to phase-down and control Army intelligence collection activities. Although several months elapsed, I recall that the writing of the February memorandum was a long-drawn-out affair, involving a number of back and forth sessions between Dave McGiffert and me. You will subsequently note that one element of the February 1969 memorandum was a requirement for a manpower survey of intelligence activities relating to civil disturbance.

We discovered in the files a 28 October 1968 memorandum thru the Chief of Staff to the General Counsel which apparently responds to an oral request for information by Milt Hyman. In this paper, General Franklin, Deputy ACSI, states "Army intelligence is not engaged in penetration of civilian organizations for the purpose of collecting intelligence information on civil disturbances." I would be interested in examining the back-up papers which led to this memorandum. I doubt that we used the term "penetration" in asking the question—from what Milt Hyman and I can reconstruct, the question was asked in the context of our presentations on the Hill in support of the new AOC, and was designed to assure us that Army intelligence did not have any kind of invidious role in the civilian community. We will research this matter further.

At about this time, 24 October 1968, we find a memorandum from Colonel Bush, Executive to the Under Secretary, to SGS, which says that the intelligence summaries being furnished contain too many inconsequential items. The memorandum notes that some "mere police blotter" items are being reported. The memorandum attaches some criteria for inclusion and exclusion of items in the reports. While this memorandum demonstrates a recognition that we are getting a lot of junk information, it really only attacks a manifestation of the problem, and not the problem itself, since it does not reduce the basic reporting. Milt Hyman recalls that Colonel Carter, then the Executive in DCDPO, stated that they would merely cut down on the information reported to the Under Secretary and would continue to supply the detailed information reports to the other addressees.

On the same date, we find a memorandum from Dave McGiffert to the Chief of Staff asking for a briefing of the Civil Disturbance Steering Committee on Army intelligence programs relating to civil disturbances. This briefing was to be given in conjunction with one by the Department of Justice at the same meeting. Milt Hyman and I recall this as a deliberate effort to embarrass the Department of Justice by making them reveal their own shortcomings in the Steering Group meeting. In fact, their short comings were amply revealed by their own briefing, but apparently without any keen sense of embarrassment on their part. Accordingly, we accomplished only half our objective. We will try to locate the briefing script used by ACSI at this time, since it should be a very good indication in late 1968 of how the Staff was explaining to Army and Defense Secretariat officials the Army intelligence activities in the civil disturbance field.

I believe that one of the most significant documents turned up by our file review was a 25 October 1968 memorandum by General Mather, DCDPO, to the Under Secretary. The memorandum responds to a request for an upgrading of the civil disturbance status report which had been sent to Secretary Clifford on 1 April 1968. DCDPO forwarded a draft report. To some extent, their draft report reflected inputs from the Office of General Counsel since Milt Hyman worked informally with the DCDPO people who were responsible for preparing the report. The second page of the report deals with intelligence, and on the third page we find the following significant paragraph:

"The effectiveness of the military intelligence apparatus to provide advance notice of unrest is limited by the Delimitations Agreement which restricts Army involvement. This agreement assigns the FBI the responsibility for advising the other subscribing organizations of important developments in the categories of domestic espionage, counterintelligence, sabotage, subversion, and other intelligence matters affecting internal security. Because of the regulatory restraints imposed by this agreement, it has been DA policy that the procurement by Army counterintelligence agents of domestic intelligence on subversive activities be accomplished by liaison with civil law enforcement agencies at all levels (primarily the FBI). When the security of Federal forces is endangered or when the situation adversely affects the Army's capability to perform its mission, or where employment of Federal forces is imminent, on-the-spot physical observation may be undertaken by military personnel. The FBI and the Army must rely heavily upon reports from local police whose intelligenec gathering systems vary widely both as to operating philosophies and efficiency."

I believe it is especially significant to note that the paragraph strongly suggests that information collection relating to "domestic intelligence on subversive activities" is solely a liaison operation, except in the three situations mentioned. Those situations—danger to the security of Federal forces, adverse effects on the Army's capability to perform its mission, or imminent deployment of Federal forces, are very limiting. Yet the memorandum states that it is only in those cases that on-the-spot physical observation may be undertaken by military personnel. I believe this language is enough to mislead any reasonable reader into believing that there was no significant, widespread collection of intelligence by military intelligence agents engaged in direct observation of civilian activities. Given reports such as this, it is little wonder that senior Secretariat officials were not fully appraised of the hazards involved in the civil disturbance collection game.

However, again to provide balance, I would note that on page 4 of the report we refer to the selection of additional Negro agent personnel. I suppose that one who thought about it might wonder why we needed Negro agent personnel if we were only collecting by liaison. However, if one goes back to the January 1968 memorandum of my White House meeting with Califano and Nitze, one will find the Justice officials commenting on the small number of Negro agents in the FBI. I believe there was a thought somewhere along the way that we might lend our Negro agent personnel to the FBI to be employed under their control in certain special cases.

General Mather's memorandum probably derives, in part, from an ACSI briefing given by General Franklin the month before (September 18) at the CONARC Intelligence Conference. The script of this briefing contains much of the same language as was used by General Mather, including the reference to the three situations which justify collection activities other than liaison. However, the reference to "imminent" employment of federal troops is somewhat weaker in the briefing script; the script refers to circumstances which "may require the employment of Army resources," and an earlier draft of the script indicates that the civil disturbance intelligence program generally falls under this jurisdiction. This approach would lead me to believe that, although the

Staff's "party-line" rhetoric included an emphasis on liaison activities and a relationship between intelligence activities and the likelihood of employment of Army resources, in general the Staff did not feel that references to "imminent" or even possible employment of federal troops provided any limitation on pre-disturbance intelligence collection activities. Such references were more likely used as "boiler plate" justifications for on-going activities. Unfortunately, the rhetoric which was employed tended to be misleading.

Yet another example of the probably misleading emphasis on liaison activities is found in an 8 January 1969 memorandum from General Mather to the Under Secretary of the Army. This memorandum responds to a request for a specific definition of the Army's intelligence mission and requirements. General Mather refers to the references to intelligence in DoD Directive 3025.12 (the June 1968 Civil Disturbance Charter), as well as to statements contained in Mr. Nitze's memorandum, referred to earlier, denying the Army's request for 167 additional intelligence spaces. An appropriate statement of the Army's intelligence mission was said to be the following:

"The Army's counterintelligence role in domestic civil disturbances includes the acquisition of information, primarily through liaison with civil agencies, the production of counterintelligence to meet Department of Defense needs, and the provision of essential intelligence data to the National Military Command Center and Military Service Command Centers on a timely basis to insure that the National Command authorities and appropriate Military Service Command authorities are adequately informed."

So here we find, in January 1969, another reference which, fairly interpreted, tends to minimize military intelligence acquisition activities through direct observation.

We also find a 24 January 1969 memorandum for the Under Secretary from the Assistant Chief of Staff, Intelligence, General McChristian. It refers to the 2 May 1968 Information Collection Plan, discussed earlier, and although it does not directly characterize the nature of our overt collection efforts, it contains the following statement:

"It [the May Plan] further provides that *during the execution of civil disturbances* [*sic*] *control operations*, U.S. Army Intelligence Command personnel are authorized to operate more actively to fulfill intelligence requirements . . . ."

This statement tends to suggest that overt collection is tied to the execution phase.

The 8 January statement of the Army intelligence mission led to the preparation of the 5 February 1969 memorandum from Dave McGiffert to the Vice Chief in which he attempted to bring Army intelligence activities under closer control. Despite the statements which had been made to us concerning reliance on liaison, there was a pervasive feeling at the time that it was very difficult to get a completely satisfactory understanding from the Staff concerning just what was going on in the field. This led to the inclusion in the 5 February 1969 memorandum of a requirement to report all overt collection activities. There was also a prohibition on overt collection activities except where there is a clear need for intelligence information which cannot be filled through liaison activity, and a requirement that covert operations be approved by the Under Secretary.

The Staff strongly opposed the central elements of the 5 February McGiffert memorandum. The Staff response is contained in a 5 March 1969 memorandum to the Under Secretary signed by the Vice Chief. For the first time, in the attachment to this memorandum, one finally begins to understand that Army intelligence has not, in fact, been relying exclusively, or perhaps even primarily, on liaison activities. Interestingly, despite the fact that General Franklin had advised me a few months earlier that Army intelligence was not engaged in "penetration" activities in the civil disturbance field, the Staff was strongly opposed to requiring review by the Under Secretary of covert operations. This was a key stage in our intelligence problem: had the Staff not taken such a strong position at this time, we would probably have been out of the intelligence business of the kind which ultimately got us into trouble well before the Pyle article appeared in January of 1970. There has been a strong tendency throughout our soul-searching on the background of our intelligence activities for the Staff to blame Dave McGiffert for all of our activities in this field. Yet, when he sought to bring the activities under control, strong Staff opposition resulted. In fairness to the Staff, however, one must say that they were properly concerned that their activities might be limited while at the same time they were expected to furnish information of a quality, quantity and timeliness which could not be achieved by relying on liaison. Yet, the McGiffert memorandum did not prohibit overt collection activities; it simply said they should not be used when liaison could produce the required information. It is not clear why this would have been a serious constraint on the Intelligence Command.

Beginning almost immediately after the new administration came on board, Under Secretary Beal and I began having discussions with Deputy Attorney General Kleindienst on a wide variety of civil disturbance topics. In early March 1969, during a meeting with Mr. Kleindienst in his office, I suggested that we needed to take a closer look at the civil disturbance intelligence system. He quickly agreed, and a meeting was scheduled within a few days. I find in the files an 18 March 1969 note to Secretary Resor, attaching a Talking Paper to be used with Secretary Laird. This refers to a 17 March 1969 meeting which I had with Mr. Kleindienst. I went to the 17 March meeting with a carefully worked-out outline designed to take Kleindienst through the thought processes which led us to conclude that military intelligence ought to get out of the civil disturbance intelligence business. However, it proved to be impossible to interest Kliendienst in any ordered discussion of the problem of military intelligence activities. The bull won, and the china shop lost. However, the same meeting led to a statement by Mr. Kleindienst that we ought to have a formal memorandum or order from the President giving the Attorney General coordinating authority in the civil disturbance field. I suggested that such a memorandum should be sent jointly to the President by the Secretary of Defense and the Attorney General.

Having lost in our attempt to get Mr. Kleindienst to address the intelligence issue, in our verbal discussion, Milt Hyman and I decided we would try to get our views incorporated in the memorandum which was to be sent to the President. The first draft of the memorandum, prepared by the Army about 23 March, contains the following language about intelligence: "We believe that the Federal Bureau of Investigation should be formally assigned primary responsibility for collecting, and furnishing on a timely basis to other concerned agencies, raw intelligence. Although the Army Intelligence Command could perform this function, the salutary tradition of avoiding military collection activities in predominantly civilian matters reinforces our view that the Army would be available to assist the Department of Justice in the *evaluation* of intelligence."

I find in the files a March 25, 1969 memorandum from Bill Rehnquist, Assistant Attorney General (Office of Legal Counsel) to the Attorney General and the Deputy Attorney General. This represents the first formal Justice draft of the Civil Disturbance Plan intended for the President's approval. Although it does not pick up the Army language verbatim, it does contain the following statement about intelligence responsibilities.

"The Attorney General will be responsible for collecting, analyzing, evaluating and disseminating intelligence bearing upon the probability of any serious disturbance. The Federal Bureau of Investigation will be charged with the task of collecting raw intelligence and transmitting it on a timely basis to the Department of Defense. At the request of the Attorney General, the Department of the Army, through the U.S. Army Intelligence Command, may assist in this effort. However, in order to preserve the salutary tradition of avoiding military intelligence activities in predominantly civilian matters, the U.S. Army Intelligence Command should not ordinarily be used to collect intelligence of this sort."

Up until this time, the staffing had been done without the benefit (?) of the views of the FBI. We learned informally that the FBI was not at all happy with the responsibilities proposed to be thrust upon them in the civil disturbance plan. We submitted comments to Justice on 29 March 1969. While we accepted the Justice language on intelligence generally, we suggested that the term "should" should be changed to "will" so that the memorandum would state forcefully that the Intelligence Command "*will* not ordinarily be used to collect intelligence of this sort." However, we would have been well off with the language in the Justice draft, for during the period between 25 March and 11 April, when the memorandum was submitted in final form to the White

House, Justice backed some distance away from the March 25 language. There were various discussions which Under Secretary Beal and I had with Mr. Kleindienst and other Justice officials, but we found them to be unsuccessful, and on 1 April 1969 Secretary Resor sent a memorandum to the Secretary of Defense transmitting a proposed final version of the memorandum in which he points out that we were not able to obtain agreement with Justice on the intelligence problem and had to accept rather general language with the understanding that the question would be explored further in the near future. The final memorandum contains the following language on intelligence:

"Under the supervision of the Attorney General, raw intelligence data pertaining to civil disturbances will be acquired from such sources of the Government as may be available. Such data will be transmitted to the intelligence unit of the Department of Justice, and it will be evaluated on a continuing basis by representatives from various departments of the Government. After evaluations have been made, the data will be disseminated to the Attorny General, the Secretary of Defense, and the White House."

Following the approval of the Civil Disturbance Action Plan by the President, we did have various discussions with Justice on the intelligence problem. In retrospect, we probably did not push the matter as hard as it might have been pushed. For this I feel personally responsible, although I recall that in April and May 1969 almost all of my time was occupied by the CHEYENNE problem and in particular by the interminable sessions we had of the CHEYENNE Review Group (of which I was then Chairman) leading to the default termination of the production contract. Milt Hyman did have a number of contracts at the working level in Justice, and they were wholly unsatisfactory. There was really no one in charge, and we have learned from experience that working with the Deputy Attorney General was not likely to be productive on this point. The Justice effort in the inteliigence field was so haphazard, so poorly organized and led, that we pretty much concluded that little could be achieved in the way of greater Justice responsibilities until their information unit became stronger.

Whatever our earlier misapprehensions may have been concerning the extent of overt collection activities, we were on notice after a 15 April 1969 paper from the ACSI thru the Vice Chief to the Under Secretary provided the first quarterly summary of Intelligence Command overt collection activities. This report was one of the requirements of the 5 February McGiffert memorandum which had been retained after the Staff reclama of other points in the memorandum. The report revealed that of a total of 3219 spot reports, 1129 contained information overtly collected through means other than normal liaison, and an additional 70 contained overtly collected information of incidents not relating to civil disturbances.

Based on a recommendation from me of 10 April 1969, Under Secretary Beal responded to the Vice Chief on 24 April 1969 suspending certain provisions of the 5 February 1969 McGiffert memorandum. This response to the Vice Chief's 5 March 1969 memorandum had been delayed because we had hoped to be able to make progress on the intelligence problem in our discussions with Justice on the civil disturbance memorandum of 1 April 1969. The 24 April 1969 memorandum retained limitations on the distribution of civil disturbance intelligence information, and also retained quarterly reporting requirements for overt collection activities other than liaison. The requirement for advance approval of covert operations was also retained. While other mandatory aspects of the February memorandum were suspended, Under Secretary Beal stated "I believe the Staff should actively explore every possibility within the Department of the Army for reducing our civil disturbance collection and production efforts."

On 28 May 1969, ACSI (General Fenili, a Deputy, signing for General McChristian), sent an interesting memorandum to General Blakefield. The memorandum emphasizes the serious Secretariat concerns about civil disturbance intelligence activities exceeding the Army's strict requirements. It notes the mandatory requirements of the 24 April Beal memorandum, and also emphasizes the desire to explore every possibility for reducing civil disturbance intelligence efforts.

Perhaps most interesting of all, however, is the comment on the review of the first quarterly report on overt collection activities, referred to above. The memorandum states "I was surprised to observe that fully one-third of your Headquarters' Spot Reports were based on 'agent observation'. This must be a heavy burden on your Command and should be reduced." This is revealing because it indicates that both the Secretariat and the key Army Staff element involved in intelligence activities were somewhat in the same boat—both were surprised at the extent of the overt collection activities.

General Blakefield, CG, USAINTC, responded to the Fenili memorandum on 1 July 1969. The response is defensive in tone, indicating that USAINTC's overt collection activities were undertaken in response to specific requirements, oral and written, from Headquarters, DA. General Blakefield also maintained that much of the information he was asked to get could only be obtained by overt collection. In any case, as a result of this exchange and a series of meetings, USAINTC issued instructions on 16 September 1969 stating essentially that, while overt collection was still authorized, liaison was the preferred technique, and that overt collection would be used only when liaison could not obtain the required information.

Apropos of the Justice Department's action and initiative, or lack thereof, there was a 7 August 1969 memorandum from General McCaffrey, then DCDPO, thru the Vice Chief to the Under Secretary. Members of his staff had met with representatives of the Department of Justice in the context of a law enforcement policy committee which Justice had created. I had apparently also attended the meeting, although I can't remember it. General McCaffrey's memorandum points out that the Department of Justice Civil Disturbance Plan fails to address the intelligence problem. During this period, we were offering various forms of staff assistance to Justice in the hopes that some of our people could help them figure out what they wanted to do and get started on it. Nothing much came of these efforts.

A 22 July 1969 memorandum from General McChristian thru the Vice Chief to the Under Secretary provides the second quarterly report on overt collection activities required by the 5 February McGiffert memorandum. This report was promising in terms of reductions in overt collection activities. In the earlier report, 35 percent of the spot reports had contained information collected overtly other than through normal liaison. For the second report, the percentage had dropped to 15 percent. As one of the Under Secretary's Military Assistants pointed out in a note analyzing the report, this was an indicator that our intelligence establishment was complying with the intent of the 5 February and 24 April 1969 memorandum. For several months my office had been sitting on a set of EEI submitted by DCDPO. One of the objectives of this set of EEI was to have a definitive statement of the Army's requirements which could be given to Justice with the understanding that they would supply information fulfilling our requirements. I finally approved the EEI on 18 August 1969 in a memorandum thru the Vice Chief to DCDPO. My approval was with one change, which had previously been negotiated with the Staff. That change was to require the elimination of an item specifically requiring the reaction of minority groups and dissident elements to the effects of changes in Federal, State, or municipal law, court decisions, referenda, amendments, executive orders, or other directives. Our view had been that to explicitly ask for information of this kind raised too great a risk that we were collecting information of an essentially political nature about changes in Government policy taking place through the operation of the political system. It is interesting to note that the EEI statement provided for progressively greater stages of monitoring as a disturbance situation worsened. During periods of general monitoring the EEI were stated as follows:

(1) What are the plans, operations, deployment, tactics, techniques and capabilities of individuals, groups, or organizations whose efforts are to create civil disturbances?

(2) What are the indicators of imminent and potential violence in priority objective areas?

I think it is fair to say that although there were only two elements of the EEI applicable in periods of general monitoring, the first of these, set forth above, afforded any Army intelligence officials inclined to give it an expansive reading a rather broad license to collect information on individuals and organizations.

In October of 1969 we received another quarterly report on overt collection activities. The percentage of spot reports containing material collected by overt methods other than normal liaison was about the same as in the previous report—14 percent. When the fourth quarterly report came in in January 1970, the percentage of spot reports based on overt collection other than liaison had nearly doubled, rising to 27 percent. At the time we viewed this as a somewhat predictable development because of the extensive antiwar activities in Washington during October and November 1969. These activities involved major demonstrations for which major planning efforts were undertaken under the direction of the Department of Justice. We knew that our intelligence people became quite active under these circumstances, and were probably not particularly excited over the statistics.

It was, of course, in January of 1970 that the Pyle article appeared in the *Washington Monthly.* What happened from then on is pretty well known, and mostly downhill. Accordingly, I am terminating this historical report as of January 1970.

MEMORANDUM FOR RECORD

Subject: Army Civil Disturbance Intelligence Activities, Prepared by Milton B. Hyman, Office of the General Counsel, Department of the Army, January 23, 1971.

This memorandum represents my attempt to recollect and reconstruct the Army's involvement in civil disturbance activities as seen through the eyes of one who was more or less continuously involved in civil disturbance planning activities at the Secretariat level from about October-November 1967 until March 1970. The documents were drawn from the files of ASG, OGC and OUSA. It does not purport to be a complete catalogue of all the relevant material.

1. 31 JULY 1967—COUNTERINTELLIGENCE RESEARCH PROJECT, CIVIL DISTURBANCES CONUS

This project was prepared by an OACSI detachment known as the CIAB (Counterintelligence Analysis Branch). I have no idea who initiated the project but according to a 24 January 1969 ACSI paper, it was generated as a result of pressures during the Detroit disturbances. As you read these CIAB reports, you will notice that they tend to be somewhat inflammatory. As I remember, as a result of reading one of the reports in October 1968 I met with a COL Brown who was head of the study and went over my comments with him informally. My memo is included in this section. COL Brown agreed with many of them and promised to tone down the rhetoric in future reports. It was almost a constant battle between us (in fact the Secretariat as a whole) and ACSI to tone down what we considered ACSI's intemperate comments in its intelligence material. At one point in 1968 Mr. McGiffert "called-down" the ACSI briefer at a Steering Group meeting in the middle of his briefing.

The 1967 estimate may have been the predecessor of the Compendium. The next items in this section are examples from the Compendium.

The Compendium I believe was prepared in late 1967 or early 1968 and was a yellow notebook containing loose-leaf alphabetical listings of individuals and alphabetical listings of organizations. The data was not very impressive in terms of completeness or scope. I believe I was once told that most of it was picked up from FBI documents. The rationale given for keeping the Compendium was that military planners and commanders had to have a reference book to identify individuals and organizations that may or may not be responsible for worsening or contributing to a disturbance. When individuals were referred to in reports the commander (or his intelligence officer) had to be able to go to a reference work to identify it. Hence the Compendium. I think the "Black Books" which were prepared by ACSI were supposed to be the same kind of document for the MI groups. That project never really amounted to anything because as I recollect from our work in conjunction with the Pyle article, the black books contained mug shots of disreputable individuals largely with minor criminal records and largely southern towns and cities. By the way, the extracts from the books were found in Mr. McGiffert's files and probably demonstrated a use of the book for the purpose intended. Namely, one can reconstruct a situation with Mr. McGiffert asking a question about an individual and an organization that happened to be listed in the book. The question was probably answered by extracts from the book.

2. 23 JULY–2 AUGUST 1967—EXTRACT FROM AFTER-ACTION REPORTS: VANCE REPORT

Cyrus Vance, who was the President's representative during the Detroit civil disturbances, prepared an after-action report. It is colloquially referred to as the Vance Report, and we have a complete copy in the "Green" 1967 Civil Disturbance Black Book. In this report Mr. Vance commented on the inadequacy of the police-type reports received by the responsible officials during the disturbance. He recommended an indicator curve of some type to allow comparison between normal criminal activity and civil disturbance generated crime. This suggestion was picked up by DCSOPS personnel and was a pet project of General Johnson, as well as his subordinates Generals Hennessy and Hollis. ACSI, although it acceded to the request, never really seemed enthusiastic about it. They believed the indicators were meant to be predictive tools and refused to accept the concept that you could predict civil disturbances on the basis of such indicators. Nevertheless, the idea was accepted in the Hennessy report (see item ____) and was endorsed by the Chief of Staff (see item ____).

3. 10 OCTOBER 1967—TFW OPLAN (DRAGON WING)

During the period of the Detroit civil disturbances (until April 1968) the JCS actually had responsibility for civil disturbance planning. Nevertheless, it was realistically accepted that the Chief of Staff, Army, would be the military commander in direct control of the troops with JCS delegating authority to him, and I believe it was recognized or should have been recognized after Detroit, that the Presidential line of authority would run through the Secretary of Defense to the Secretary of the Army to the Chief of Staff. The Dragon Wing OPLAN was prepared by XVIII Airborne Corps, which was targeted on Washington, D.C. It was dated 10 October 1967 so it was obviously revised and updated after the Detroit disturbance. You will note that it is a derivative plan from the CINCSTRIKE OPLAN 563 (Garden Plot). The first page references all of the relevant plans that antedate the Department of the Army Civil Disturbance plan developed by the Hennessy task force (item____) and therefore further research should be able to retrieve most of these plans. They should have an intelligence annex, allowing a comparison with what was developed as a result of the Hennessy study. The intelligence annex to Dragon Wing (Annex B) is quite detailed and contains a series of EEI (Essential Elements of Information) which are really not too bad. Note Appendix 6, which lists organizations and personalities.

4. 24 AUGUST 1967—USA MEMO TO WASHINGTON CIVIL DISTURBANCE PLANNERS

As a result of the Detroit disturbance, concern focused on the potential for Washington, D.C. An inter-agency group was formed under the Chairmanship of Mr. McGiffert to plan for the possibility of disturbances in D.C. Note the discussion on page . With reference to the intelligence situation, it states that intelligence coverage will continue, but that forecasting could not be expected to be too fruitful. This is a recurrent theme in the papers produced at the Army Secretariat level, especially. We constantly referred to our intelligence information, to our continuing efforts to monitor the situation (whatever that implies) and then we generally undercut it all by saying that it was impossible to predict civil disturbances. As part of this section, I have included a 27 July 1967 memo for record concerning the Washington planning group. The Attorney General was present. Note the preoccupation with the necessity for intelligence collection and reliability, as well as the importance of rapid acquisition of "hard" intelligence. Throughout the later documents it appears that the acquisition of "hard" intelligence was an elusive holy grail sought after by civil disturbance planners. In this regard, the 10 October 1967 memorandum for record of Mr. McGiffert concerning a meeting with the Attorney General about the Pentagon demonstration is illustrative. Mr. McGiffert states, "Mr. Yeagley [the Assistant AG for Internal Security] summarized the status of current intelligence as raising more questions than answers." It may be that the Army got involved in collecting intelligence because subconsciously we did not feel we could rely on the Department of Justice intelligence collection and prediction efforts and we wanted our own independent sources.

5. 2 JANUARY 1968—REPORT OF INFORMATION FURNISHED TO KERNER COMMISSION

The Army gave a great deal of assistance to the Commission. We provided (through Hennessey Task Force members) input and comments on the draft.

This report documents that assistance. Note at Tab B: the Counterintelligence Research Project, 1967.

6. 1 AUGUST 1967—DCSOPS MEMO FOR ACTING SEC ARMY

This memorandum concerns the procedures in the Army Operations Center for monitoring civil disturbances and probably responds to questions posed by Mr. McGiffert. It evidences a concern on his part about incipient disturbance situations.

7. 5 OCTOBER 1967—DOJ INTELLIGENCE REPORTS AND 2 OCTOBER 1967—ARMY CI ESTIMATES ON THE PENTAGON DEMONSTRATION

These documents indicate the kind of intelligence material being presented to the planners with respect to the Pentagon demonstration.

8. 21 OCTOBER 1967—USA MEMO FOR SEC DEF CONCERNING THE PREPARATIONS FOR THE DEMONSTRATION

This memo was prepared by John Kester after Mr. McNamara asked for a discussion of the preparations for the demonstration. It doesn't deal explicitly with our intelligence activities, but you will note that on page 1 it begins with "current intelligence estimates indicate" and on page 2 again refers to "intelligence estimates." I would say that this kind of approach is typical of the documents we prepared that went to Defense. We were constantly supplying Defense with intelligence information, talking about our intlligence estimates, continuing activities to monitor the situations or a delay in a decision until we had the latest intelligence information. I don't ever remember an instance when a direct question came back concerning the source of this information or how we were continuing to monitor the situation. [During the "AOC/CDCC" period (see item ____) there was some resistance at Defense level to the whole DCDPO idea.] Later on you will notice that the current intelligence information becomes part of the various talking papers used by the Under Secretary in the weekly meetings with the Secretary of Defense.

9. 25 NOVEMBER 1967—USA MEMO FOR RECORD

Mr. McGiffert was approached by Joseph Alsop and asked questions about central management of disturbances. Note Mr. McGiffert's answer concerning the qualification of DOJ to respond on matters of this kind. This is the first indication I have seen of *our* attempting to set up the Department of Justice as the arm of the Government responsible for intelligence matters. Note that item 6 refers to the fact that DOJ had just set up its Information Center. I believe there was even a press announcement about a computerized data bank. Actually at this time I believe it was a summer project manned by summer clerks and I don't think it really got off the ground. The IDIU was a constant source of some amusement to Army planners. See item ____, the MFR concerning the Cunningham-Jordan meeting in March 1969.

10. UNDATED ACSI MEMO FOR USA

This memorandum, one I had never seen before, appears to respond to a USA request for information about intelligence activities. Note paragraph 1, the statement to the effect that the Army is essentially dependent on the investigative efforts of other Federal agencies. This refers to the liaison line that ACSI fed to us for many, many years. The reference to the Delimitations Agreement also tends to obscure the inquiry. As a matter of fact, investigation after the January 1970 Pyle article disclosed that the delimitations agreement did not restrict the Army from acting in areas where the FBI had given permission to the Army. Since the FBI had little interest in civil disturbance intelligence, the Army apparently was given almost free rein to operate in that area. Paragraph 3 is interesting because it states the premise on which we based our intelligence activities. Note the statement in paragraph 4 to the effect that "Army Intelligence is not engaged in any concerted investigative effort to determine the roots of domestic discontent or the channels it will follow." The memorandum is obviously dated prior to 5 December 1967, since it indicates that a more detailed intelligence assessment of the 1967 disturbances will be given to the Under Secretary on that date.

11. 24 OCTOBER 1967—GC MEMO TO USA

Bob Jordan observes in his Lessons Learned that, "I believe we need to consider the necessity of having our own observers, carefully selected so their eyes will see the things we want to know about, spotted out in the demonstration area." I think that most commanders feel this way and it is this pressure from the commanders which motivated ACSI, as well as the G2s of the various commanders, to go out and get information about what is happening "out there."

12. 7 DECEMBER 1967—OASD(A) MFR

This memo concerns demonstrations against the Oakland induction center in December 1967. The memo demonstrates the concern of the city manager of Oakland that the police forces would be unable to cope with a prolonged demonstration. The memo indicates an understanding that Army authorities are working in conjunction with local authorities in planning for the situation. Mr. Cooke, the author of the memo, had continuing responsibility with respect to Army civil disturbance functions. He was, of course, involved in the October Pentagon demonstration, various demonstrations directed at the Pentagon thereafter, and the controversy concerning the relocation and expansion of the Army Operations Center in 1968. His office wrote DoD Directive 3025.12.

13. 13 DECEMBER 1967—OUSA MEMO FOR SGS

The Military Assistant to the Under Secretary indicated that Mr. McGiffert had reacted favorably to the quality of the attached ACSI 5 December 1967 "1967 Intelligence Assessment." The memorandum goes on to request a biweekly "summary of information concerning prospective civil disturbances, peace protests, and civil rights protests in calendar year 1968. The first summary should include a resume of Martin Luther King's announced plans for a Washington, D.C. protest in the spring." The choice of language is Mr. McGiffert's.

14. 27 DECEMBER 1967 DF

After the Detroit civil disturbance, the Chief of Staff appointed a study group colloquially referred to as the Hennessey Task Force after its Chairman, BG Hennessey. The study group reviewed the entire posture of the military planning and operations concerning civil disturbance. Item 14 shows the Chief of Staff's actions on the various committee recommendations. I have extracted only the conclusions relating to intelligence (referred to as "Operational Information"). See the next item.

15. DEPARTMENT OF THE ARMY TASK FORCE GROUP FINAL REPORT, CSM 67–316

This is the Hennessey study. Its recommendations were acted on by the Chief of Staff on December 18, 1967. I have extracted the various parts of the study dealing with intelligence. It should be noted that as part of the study the new Department of the Army Plan dated 1 February 1968 was developed. It contains the new EEI in Annex B. It is my feeling from reviewing the report and recollecting about the situation, that ACSI (General Yarborough) "captured" this section of the report and wrote it to suit themselves. I have no objective data to point to in support of my conclusion. Let me offer a number of comments on the report. First, the summary on page B–9, Item 2, recognizes the Vance recommendations for the statistical data base. Of course, the necessity for a statistical data base leads to certain EEI requirements that one might otherwise think unnecessary for Army intelligence. Paragraph (3) discusses the EEI. The ACSI personnel with whom I have spoken about this indicated that specific EEI are necessary in order to ensure that the agents go out and get the right kind of information and format it properly. Notice that in the Task Force Conclusions, page C–24, paragraph 58, the report states that the intelligence growing out of the EEI "when developed will serve to indicate potential areas of civil disturbances." Note recommendation 59: "Continuous counterintelligence investigations are required to obtain factual information on the participation of subversive personalities, groups or organizations and their influence on urban populations to cause civil disturbances." The recommendation is that ACSI *continue* with its efforts towards this end. Compare this with the memorandum provided to the Under Secretary at about the same time. The

DA Plan is included as part of this section since the Hennessey Group wrote it. I won't comment on Annex B to the Plan except to say that since the Plan was an outgrowth of the Task Group it was not coordinated with us prior to publication. Afterwards I remember reading it and commenting on the detail in Annex B, but I don't remember what came of my comment. In any case, as indicated by the next item, our attention focused in a different direction.

16. HÉBERT HEARINGS

Somewhere there is a copy of the report of the "Hébert" Subcommittee's inquiry into the capability of the National Guard (and the Active Army indirectly). The Hébert Subcommittee roasted the Army concerning the Detroit civil disturbances and the way they were handled. They were particularly concerned about unloaded weapons. Mr. McGiffert appeared before the Subcommittee. At that time our principal concern about the civil disturbance matters related to the adequacy of the Army's planning, civil disturbance related equipment (principally of the Guard), and training. Interestingly, none of the fact sheets prepared as back-up for Mr. McGiffert to use at the hearings referred to intelligence matters. This may be because the Committee was primarily concerned with Guard activities. However, about the same time McClellan wanted to investigate us and we were not concerned about intelligence with respect to his investigation either.

17. 2 OCTOBER 1967—OCLL MEMO CONCERNING M'CLELLAN HEARINGS

These are various papers relating to the McClellan hearing. The Committee staff wanted intelligence information in the Army's files (see item ____). In April 1968 General Yarborough was to give a speech—we don't have a copy of the draft—but OCLL might have saved a copy.

18. 5 JANUARY 1968 ASCI MEMO TO USA

This represents the first of many installments of Mr. McGiffert's disagreement with ACSI evaluators.

19. 10 JANUARY 1968—GC MEMO FOR USA

This is a MFR by Bob Jordan who accompanied the Deputy Secretary of Defense, Mr. Nitze, to a meeting in Mr. Califano's office with the Attorney General, Deputy Attorney General and Mat Nimetz. It concerned DOJ planning for 1968. Note the reference to the Inter-Divisional Information Unit and the DOJ development of a computerized information system for intelligence evaluation. Note the Attorney General's indication that every resource is needed in the intelligence collection effort although he felt DOJ was getting too much volume. This attitude about getting intelligence was, I think, typical for the times. Note the instructions of the Under Secretary with respect to the action items: Namely, ACSI to screen intelligence and send it on to DOJ. I think that you could point to this document as a charter for ACSI even if it didn't have the forward thrust given to it by the Hennessey Study and DA Plan. Out of the Califano meeting came the coordination with D.C. Mr. McGiffert sent to the Deputy Secretary of Defense a memo on 10 January 1968 outlining our planning objectives for Washington.

20. 12 JANUARY 1968—ACSI MEMO FOR USA

This is the first of the bi-weekly summaries requested by Mr. McGiffert. It obviously required ACSI to go out and get information on the subject matter of the report. It did not say how they were to do it. Of course, a discussion of intelligence items of this kind would not be complete without a discussion of personality.

21. 3 FEBRUARY 1968—ACSI FACT SHEET ON RITA

This memo is lined through by General Johnson and is, I think, the first ACSI memo providing information on RITA to Mr. McGiffert. It may have been sparked by the January 1968 *New Republic* article. Note the message which goes out tasking all of the commands to determine what information has been developed concerning RITA within their jurisdictions. A message like this obviously has the effect of stimulating the acquisition of information. See especially c(3) concerning penetration.

22. 14 FEBRUARY 1968 AND 16 FEBRUARY 1968—STATEMENTS OF SEC ARMY AND CHIEF OF STAFF BEFORE SENATE ARMED SERVICES COMMITTEE

Note the emphasis given in the posture statement to training, equipping and organizing our units, as well as the emphasis on domestic contingency planning. I either wrote or reviewed the Secretary's statement and although I exercised intelligence with respect to it, I did not feel that it required mention.

23. 19 FEBRUARY 1968—MDW OPLAN (CABIN GUARD)

The DA Civil Disturbance Plan developed by the Hennessey Group was published on February 8, 1968. The subordinate commands then all prepared operations plans in accordance with the DA plan. Cabin Guard was MDW's plan. The intelligence annex is rather well developed. It is interesting that the EEI in the Cabin Guard OPLAN does not correspond to the EEI in the Hennessey Task Force Report.

24. 27 MARCH 1968—USA LETTER TO BOB

The letter refers to a briefing given by General Hennessey to the BoB staff on Army's plans for dealing with civil disturbances. At that time General Hennessey was running around to a lot of different places, including the Kerner Commission (see item 5) reporting on our planning activities.

25. 30 MARCH 1968—CHIEF OF STAFF MEMO TO USA

The memo reports on the planning conference held in the AOC and attended by the various senior commanders. The memo indicates the areas that were of primary interest in civil disturbance matters at that time. Note the emphasis on the coordination with the states and local areas. We had people out contacting the local police (principally PMG and NGB) in an effort to upgrade their planning and preparation for civil disturbances.

26. 1 APRIL 1968—USA MEMO FOR SEC DEF

This is a memo on the status of our civil disturbance planning that I prepared on the basis of preliminary information and reports provided principally by DCSOPS. We gave the whole thing to General Hennessey to review. The intelligence input came from ACSI. The section on page 2 concerning intelligence coordination wih DoJ probably derives from the meeting with the Attorney General attended by Bob Jordan. I think the Secretariat felt even at that time that Justice would be handling the intelligence matters. Notice in the beginning of the second paragraph, the reference to liaison. I think it never occurred to us at that point that the MI groups would be collecting information other than by liaison since we were told liaison was the principal means by which information was collected. Again, note our thoughts about the impossibility of predicting civil disturbances. Actually, if one presses the point far enough so that it is acknowledged that civil disturbances cannot be predicted, you can say that early warning in the form of spot reporting is even more important than it would be if one could predict (this argument was used against us in March 1969). Note also our reference to the grace period before alert and deployment. This is a statement of what we thought was our intelligence function; I'm almost positive it was cleared with ACSI. We didn't realize the extent to which ACSI would go beyond what we thought was the proper intelligence role for the Army. Notice that Cabin Guard was provided to the Secretary of Defense as part of our discussion of the preparations for Washington, D.C. on pages 15 and 16.

27. 1 APRIL 1968—COUNTERINTELLIGENCE RESEARCH PROJECT: CIVIL DISTURBANCES CONUS–68

This is another in the estimates produced by the CIAB group. I may not have reviewed this report in April, since it came out right at the time of the April disorders. I remember from discussions I had later in October about the estimates, that it seemed to me that the CIAB group did not rely heavily on the spot reports. Rather, they seemed to be working principally from FBI reports and newspaper reports. Note on page 1 the discussion of the weather. It was at first felt that the summer months were the "hot" months and that weather would influence the potential for civil disturbances. This report undercut that assumption. You begin to get the anti-war flavor in this report with the reaction to the Pentagon demonstration. Note particularly the conclusions on page 20 of the report. I remember paragraph "6a" as being a method of undercutting the requirement to develop a "data base" for measuring the intensity of a disturbance. In comment "b" you get the beginning of the ACSI "evaluators" move away from the concept of a Federal military interest in the small areas. Although it turns out that ACSI investigators were concerned with little disturbances in small towns, the people writing and approving the Estimate were pretty much aware of the likelihood of Federal troop commitment being limited to very large cities. The distribution is the last page. By the way, you should recognize that updating the report became a requirement as a result of the Chief of Staff's action on the Hennessey Report. ACSI was pretty good about updating initially and then the interest in updating the report fell off rapidly as it became far less valuable and important to the planners in comparison to the "spot report" type of intelligence.

28. 13 APRIL 1968—USA MEMO FOR CHIEF OF STAFF

The April disturbance had a marked impact on all those military planners who were involved in it. The magnitude and multiplicity of the disturbances worried us greatly. While Federal troops were committed in Washington, Baltimore and Chicago, there was a chance they would also be committed in other cities and, of course, the National Guard was called out in many cities. One of the lessons learned by the planners, both military and civilian, was the problem of allocating scarce manpower and airlift resources in controlling multiple disturbances. As a result, a plan developed (perhaps largely generated by Mr. McGiffert, who was the Secretariat official in immediate charge of the disturbance operations) to create an inter-service organization to plan for, and give operational support to, the effort to control multiple civil disturbance operations. While the crash programs following the Detroit civil disturbance emphasize training, equipment (especially for the National Guard) and operational planning in a generalized way (the planning packets were directed to particular cities) the emphasis after the April disorders was on detailed planning at the headquarters level and the development of techniques to control multiple disturbances. Somehow the figure of 10,000 troops for each of 25 cities and 30,000 troops for Washington, D.C. developed as the planning mark. Some attribute this to the Dep Sec Def; others attribute to General Johnson; nevertheless, this was the planning figure. As you read Mr. McGiffert's memorandum (which I believe was the third draft), you will get a feeling of the urgency and the importance that he attached to this program. The Army had been appointed Executive Agent on 5 April 1968 by a Memo from Mr. Nitze. If matters were not already progressing at a fairly rapid rate in the intelligence field at this point, the creation of DCDPO certainly furthered the process. DCDPO had a watch team on 24 hours a day and the purpose of this watch team was "to monitor developing civil disturbance situations in the United States." The Secretary expected DCDPO watch team officers to know what was going on in the United States. DCDPO in turn tasked ACSI to tell them. Whenever the Secretariat or DCDPO had a specific question, ACSI would be tasked, and it had to go out and get the information. Of course, no one told it how to do its job.

At this time, the planners in Washington began to focus very close attention on the Washington Spring project, or, as it was later called, the Poor People's March.

29. 12 APRIL 1968—USA LETTER TO DEPUTY ATTORNEY GENERAL

I think this letter grew out of an ACSI suggestion for an interagency intelligence board. I was not involved in preparing the letter. It seemed to me that during this period ACSI was constantly worrying about this intelligence board. This becomes one of the recommendations of the After Report task group. In any case, the letter gives you an indication of the rather favorable attitude toward intelligence production activities. Notice the last sentence concerning early warning about civil unrest. In fact, that is what the watch teams were supposed to be doing—monitoring incipient disturbances. Of course, the question is one of a definition of incipiency. Note the cc to Dep Sec Def.

30. 15 APRIL 1968—VICE CHIEF OF STAFF MFR, NOTED OUSA, 16 APRIL 1968

The MFR reports on an inter-departmental meeting at the White House to discuss what had happened in Washington, D.C. with, I suspect, although the memo does not disclose this, an eye toward the Poor People's March. Note again the stress on the need for improved intelligence of possible incipient civil disturbance situations. This you will note is a recurrent theme. The idea of a civil disturbance intelligence committee is brought up and Mr. Christopher, the Deputy AG, is assigned the responsibility. Nothing ever came of this committee as you will note from later memos. But each time the idea of intelligence comes up, the thought is to continue to get as much information as possible so that there will be an early warning system; Justice is handed the ball to coordinate the intelligence effort. In each case the ball is fumbled by Justice and the Army goes merrily on improving its capabilities. In fact, when it came time to implement the McGiffert memorandum, the ineptitude of DoJ is one of the arguments used against us by the DCDPO personnel who were resisting the implementation of the McGiffert memorandum.

31. 2 MAY 1968—ACSI CIVIL DISTURBANCE COLLECTION PLAN

OGC learned about this plan in late 1968, perhaps in connection with the Steering Committee briefing on intelligence items. By that time I believe we were concentrating on the "McGiffert memorandum" which would have made the plan moot.

32. 14 MAY 1968—ACSI MEMO FOR CHIEF OF STAFF

As a result of the White House meeting, a meeting of the various intelligence personnel was held to discuss implementation of the actions of recommendations arising out of the meeting. Note the emphasis on means for providing the General Staff with "better, more timely intelligence." The second major action was the assistance to be given D.C. officials in establishng an operations center. The next item in 32 is a letter by the ACSI, General Yarborough, to Mr. Clark discussing intelligence activities of the Army and requesting information about the Department of Justice capabilities in this area. Recognition is given to the Attorney General's overall responsibility. On 15 May 1968 the Deputy Attorney General replied with a wishy-washy letter that really didn't give any information. The Inter-Divisional Information Unit, as I mentioned earlier, was a laugh. It was headed by a man named Jim Devine, who was neither smart nor efficient. Again the answer is that Justice really didn't pick up its responsibilities.

33. 8 JUNE 1968—DOD DIRECTIVE 3025.12

This DoD Directive was written in Mr. Booke's office in OASD(A). The intelligence function was never really spelled out in this memorandum and we really didn't focus on it when we prepared the memo. Item 7, concerning the provision of information, including intelligence data, to the NMCC and the other command centers was the closest anyone came to it. This certainly was not intended to be a charter for ACSI. Nevertheless, I can well remember the ACSI action officers developing quite a few papers seeking to derive their intelligence mission from this paragraph. In fact, it was the only thing which they had to go on and they had no choice since ACSI is constantly concerned with documentation justifying the basis of its activities. They have have a genuine capability of spinning rather general and expansive mission statements out of thin air.

34. 10 JUNE 1968—DCDPO MEMO FOR USA

This memo discusses law enforcement tactics and the means of combatting guerrilla activities. The question was asked by Mr. McGiffert. Note the answer in paragraph 4; the best method of prevention is to have "effective intelligence." I never saw this memo.

35. 12 JUNE 1968—GC MEMO FOR GENERAL HEBBLER (OACSFOR)

This memo acts as a reminder of the Justice Department program for providing CS to the city police departments. Pete Rothenberg of our office worked directly with DoJ in developing a program of demonstrations showing the effectiveness of CS. We were going to provide Justice with the CS for distribution to the police departments. This was quite a big paper exercise we went through during June. Then I think on June 19, there was a demonstration in the District where the D.C. Police Department, which had retained a substantial stock of CS grenades as a result of the April disturbances, liberally used the stuff to control the demonstrators. This scared the Justice Department, and I think that is the reason why they ultimately cancelled the program.

36. 12 JUNE 1968—DCDPO MFR FOR USA

This memo indicates that the White House, Mat Nimetz in particular of Califano's office, was aware of the planning that we were doing. Although they did not wish to have a planning packet located in the White House, I would be very surprised if they did not in fact look at one or two packets before making a decision. At the least, I am sure the liaison included explaining what was in the packet. I remember that in conjunction with the AOC/CDCC construction battle that Bob Jordan and I were to fight later, we on occasion showed Congressional staff members, and maybe even a newsman, a planning packet. The next item in this section is a May 1968 USA memo indicative that certain information on Washington was being sent to Mr. Califano, I believe Mr. McGiffert was referring to the Report of TF Inside Reaction Times. It was always attached to the intelligence report so it is likely the White House received both. See item 49, for an example.

37. 22 JUNE 1968 DEP SEC DEP MEMO FOR SEC ARMY

This memo demonstrates Mr. Nitze's personal attitude toward the establishment of the Directorate. We were able to convince him not to send the letter to each of the Governors because General Mather was planning to speak at the Governors' Conference on the role of the Army in DCDPO. Apparently, Mr. Nitze was the top Defense official concerned with civil disturbance matters, since he signed all the papers.

38. 22 JUNE 1968—OUSA MEMO TO DR. BALZHISER

(Balzhiser was a White House Fellow who was dividing his time between the Under Secretary's office on civil disturbance matters and the Secretary's office on civil disturbance matters and the Secretary of Defense's office. He was the secretary of the Steering Group.) The hand-written notes are Chief of Staff and USA comments on a 10 June ACSI memo for the Chief of Staff giving a progress report on actions arising out of the White House meeting in Califano's office. The Chief of Staff notes that neither Justice nor the D. C. Government is showing much interest in civil disturbance planning and Mr. McGiffert returns that "intelligence—both in Washington and nationwide" should be an agenda subject for the Steering Committee meeting in July. (See the various minutes of the Steering Committee meetings attached as part of this section.) We have used this ploy on at least three occasions.

39. 26 JUNE 1968 OUSA MEMO FOR USA

Dr. Balzhiser reports on his discussions with Paul Bower who was a Special Assistant to Mr. Christopher. Paul Bower reported that he was not aware of any intelligence committee. As will appear from the memo, it seems that Wes Pomeroy (who is a Justice Department official who became an administrator of LEAA) discussed intelligence activities (Inter-Divisional Information Unit) at the Steering Group meeting.

40. 28 JUNE 1968 USA MEMO FOR CHIEF OF STAFF

In this memo Mr. McGiffert indicates his belief that we might expect an increase in disturbances in the next few months and in order to fully apprise all members of the Steering Group of the situation, a 10-minute briefing should be presented at the beginning of each Steering Group meeting "covering significant disturbance activity in the nation since the last such briefing."

41. 26 APRIL 1968—OCIL MFR

At this point I'd like to digress for a moment and discuss the Poor People's March. After the April disturbances, Rev. Abernathy continued Dr. King's plans for work on a Poor People's March on Washington and for a "Resurrection City." There was a furor on the Hill over the plans for bringing these people to Washington and we were sternly warned by ranking Armed Services Committee members against giving any aid and comfort to the marchers. McClellan, who as I noted earlier was preparing investigations into the Detroit disturbance, turned toward the Poor People's campaign. The subject of this round table discussion reported in the MFR was released in a Subcommittee print. McClellan especially emphasized careful preparations and congratulated the Army on our apparently detailed planning for the event. At the time, there was a controversy about the Committee obaining our ACSI inelligence file (see item 17). This controversy consumed some time in our office and it was resolved by our hiding behind the "third agency rule." Note how we emphasized again and again and again our reliance on the FBI. Nobody pretended that we were not engaged in the intelligence business. In fact, I believe we would have been considered remiss had we answered "sorry, we don't have any intelligence information."

In addition to the military planning for disorders, we were constantly barraged with requests for assistance to the Poor People during their march to Washington and while they were in Resurrection City. We have file material, and so does the Under Secretary's office, providing in fairly graphic detail our various actions on these matters. When these requests were made concerning assistance while en route, I remember requesting information from the team chief about the situation in the area where the request was being made. Furthermore, as people were coming into Resurrection City I remember that there were some requests and contingency planning concerning overflow and unexpected personnel. On a number of occasions Mr. Christopher asked what we could provide. In this connection I think our DCDPO people were expected to be aware of the progress of these marchers so that we would have a feel for the reality and urgency of these requests. Also attached as part of this section is a 6 May 1968 Talking Paper which was used by the Army Secretariat in briefing the Secretary of Defense. It contains as an attachment a proposal for dealing with requests for assistance discussed above.

42. 31 MAY 1968—ACSI MEMO FOR USA

This memorandum concerns a "Washington Spring Project" march notebook to provide certain individuals of the march's plan in conjunction with the Washington Spring Project. It discusses the conclusion of the march and recommendations that the requirement for updating the book be discontinued effective 31 May 1968. The USA approves. I did not know about the book or any requirement to update it, and it would be interesting to determine the genesis of this requirement.

43. MAY 1968—USO MEMO FOR MAT NIMETZ, STAFF ASSISTANCE TO THE PRESIDENT

At about the April–May time-frame the District of Columbia was improving its civil defense planning and developing in conjunction with Mr. Califano's office. We obtained a copy of the plan and commented on it to Mat Nimetz. There are a number of other letters around concerning this planning. The next item is a March 1968 invitation to Mayor Washington to attend a briefing at the Army Operations Center about Task Force Washington plans to attend a briefing on March 4. Prior to the April disturbance we had made extensive efforts to coordinate with DoJ and D.C. officials.

44. 1 JULY 1968—DCDPO FACT SHEET

This fact sheet provides a weekly summary of civil disturbance events, particularly Washington, for the Chief of Staff. It relates to the closing of Resurrection City and gives some flavor of the temper of the times. The team chiefs used to coordinate rather extensively with the Washington, D.C. command post. Knowing this, one could assume that most of the information was derived from police sources. In retrospect it is probable that most of it was obtained from direct observation by MI agents. Note that Federal military forces were prepositioned near the city. The 17 June 1968 USA Memo for the Vice Chief of Staff discusses the prepositioning of these forces.

45. 8 JULY 1968—MDW LETTER FOR ACSI

The MDW letter, which came from the Under Secretary's office, indicates that a meeting was held to improve intelligence activities relating to civil disorders in D.C. Note that Mr. Christopher's assistant, Paul Bowers, attended. Again the reference to the abortive intelligence committee.

46. 15 JULY 1968—ACSI MEMO FOR USA

Apparently Mr. McGiffert on 9 July 1968 asked for his briefer about FBI reports. The question may have been broader but it's impossible to tell. The reports indicate the sources of FBI information available to USAINTC. Note the high level of oral liaison with local FBI offices. The last paragraph is interesting. It indicates that FBI reports and products constituted between 70 and 80 per cent of the material available for DA use. One could naturally assume that the remaining 30 to 20 per cent represented principally liaison with local police departments and other agencies with information. I did not see this memorandum at the time. In fact, the OUSA note on the memo seems to imply that the memo was "close hold."

47. 23 JULY 1968—USA MEMO FOR SEC DEF

The Secretary of Defense apparently asked for a comparison of levels of disorder in 1967 and 1968. The memo responds. The last paragraph is interesting because it indicates an attempt to obtain information from the FBI to satisfy the requirement drew a negative response. This is consistent with an ACSI feeling that the FBI generally recited "the facts" without analysis. This may be related to the Justice Department criminal functions.

48. 29 JULY 1968—OUSA MEMO FOR SGS

This relates to Mr. McGiffert's request for intelligence briefings. It indicates that the briefings should prepare Mr. McGiffert for weekly meetings with the Deputy Attorney General and the Secretary of Defense. This demonstrates that Mr. McGiffert either was expected or felt that he had to be prepared to respond to questions from these officials concerning the current civil disturbance situation.

49. 31 JULY 1968—DCDPO CIVIL DISTRURBANCE STATUS REPORT

This is an example of the reports contributed by DCDPO, in addition to the raw collection of spot reports, on civil disturbance situations. Note that the national military command center, as well as the White House situation room, is on the distribution list. This relates to the requirements of the DoD Directive 3025.12 discussed later. Also at item 49 is an example of the special reports that were circulated to the Army Secretariat when significant actions occurred having a more immediate impact on the likelihood that Federal forces might be required.

50. 28 JULY 1968—COUNTERINTELLIGENCE RESEARCH PROJECT

The Estimate concluded that a repetition of the widespread violence which occurred earlier in 1968 is unlikely based on current indications of violence, but that it was impossible to predict. In this report ACSI scaled down the highest priority cities to nine cities. The Under Secretary's office has an original of the report. The next report was produced in September 1968 and is at item 59a. Attached in this section is an ACSI memo concerning questions raised by someone (USA?) concerning the report.

51. 13 AUGUST 1968—AFTER-ACTION REPORTS 4–17 APRIL 1968

After every major operation an After-Action Report is prepared. Sometimes the After-Action Report is not as important as the Task Force that is created to study the situation, such as the Hennessey Task Force. In the case of the April disturbances the After-Action Report was almost like a Task Force study. Our involvement in the preparation of the After-Action Report was minimal, except for our work in the chronology of events. Annex K of the report involves intelligence support. I think it is a very good general statement of what our philosophy is about intelligence collection activities. Annex M contains the recommendations relating to intelligence. Notice problem 7 which raises again the interagency intelligence board item. Item 8 is interesting because it suggests the establishment of a centralized information data base. At the time it should be remembered, DOJ was in the process of creating such a data base. Therefore any reference to an automated data base was probably understood by DA level officials to refer to the Justice data base. In fact, if you will look at the last item in this section, the 21 August 1968 DCDPO memo for the Under Secretary of the status of actions arising out of the April disturbances you will note that the DCDPO comment on this automated intelligence data base specifically seems to be relying on the DoJ efforts in this area. You will also remember that in the McGiffert memo there is a reference to the DoJ automated data base. While the DCDPO memo on status of actions is dated 21 August 1968, you will note at the bottom that it is marked "3 Feb 69 *noted* USA." I don't remember specifically seeing this memo and it came from the Under Secretary's file. It is probable that it was an item that Mr. McGiffert got to just prior to his departure. Also included in this item are two memos by Peter Rothenberg and me giving our impressions of activities during the April disorders.

52. 20 AUGUST 1968—USA MEMO FOR SEC DEF

This memo concerns Mr. McGiffert's recommendations for prepositioning Federal forces in Chicago during the convention. It should be remembered that there was a great deal of concern at that time over the possibility of violent disorders during the convention. The planners sought to have as much information as possible concerning the potential for disorder. The memo to the Secretary of Defense refers to intelligence information about the threat. The next item is a 15 August 1968 DCDPO memo to the Under Secretary and it concerns preparations for the Democratic National Convention. Notice the questions that have been asked by Mr. McGiffert during a 13 August 1968 briefing. The next item is an 8 August 1968 memo for record concerning the Steering Group Committee meeting on 6 August. Notice that one of the items was a discussion on the DoD support to security efforts in Miami during the Republican Convention. We do not have the text of the remarks. The following Steering Committee meeting concerned the Directorate briefing plans for the Chicago Democratic Convention. The next item in this section is a 27 August 1968 DCDPO situation report on the activities in Chicago. The last item is a 3 September 1968 DCDPO memo for the Secretary of the Army providing a summary of the civil disturbance activities during the period 25 August to 1 September 1968.

52A. 19 AUGUST 1968—SPECIAL ASSISTANT TO SEC DEF MEMO FOR USA

Mr. Elsey informed Mr. McGiffert of the requirement placed on the Department of Defense to assist the Secret Service in protecting candidates at the Democratic Convention. The requirements included 145 DoD special agents, including 47 from CID. In addition to the Secret Service request, the Army was tasked by DoJ to provide helmet-type radios to Miami Beach by the Department of Justice and from there to Chicago, to be used in conjunction with the Conventions. I believe the radios were used in the Convention Center at Miami. I remember talking with Jim Turner and being told later that there were many different kinds of radios at the Convention Center at Miami used by the different agencies that were represented. The 9 August 1968 OGC memo DCDPO, OASA, OASA (I&L)-ACSC-E refers to this loan of radios.

53. 30 AUGUST 1968—OUSA MFR

COL Bush, the Exec to Mr. McGiffert, reports a telephone conversation with Mr. Christopher on 30 August. Mr. Christopher stated that he understood Army units "perhaps, Intelligence Units, took still and moving pictures" of the disorders Thursday evening in Chicago. Mr. Christopher, according to COL Bush, asked his assistance in obtaining copies of the photographs as soon as possible. COL Bush asked General McChristian to "try to locate and provide copies of the photographs or motion pictures if available." It is interesting to note that there appears to be no questioning on Mr. Christopher's part concerning the priority of the activity. And the way COL Bush recorded his request to ACSI seems to suggest, although it is not conclusive by any means, that he was not aware of any specific video tapes. He calls them "motion pictures."

54. 11 SEPTEMBER 1968—OSA MFR

COL Cooper records that the Secretary of Defense requested that he be kept informed on a weekly basis "of significant racial incidents in the Services, and in particular any indication that these incidents were externally inspired or a reflection of a conspiracy." I would suggest that this is probably the beginning of the Secretary of Defense concern with "RITA." In connection with this concern with RITA, there is an interesting 22 August message from CONARC to PMG in response to an 8 August message. This message was found in the Under Secretary's files and paragraph 4 is noteworthy. It details actions being taken or under consideration to reduce racial incidents and includes "utilization of both military police and unit patrols to include undercover teams to prevent those incidents which might cause a disturbance." The next paper in item 54 is a talking paper probably for use by Mr. McGiffert in his meeting with the Secretary of Defense on 10 September 1968. (The Secretary of Defense's requirement was levied on 3 September 1968.) The talking paper is rather detailed about "other disturbances." It demonstrates the interest of the Defense officials for civil disturbance related information. The next paper in this section is a 28 October 1968 briefing memo used by Captain Coll, the Under Secretary's ACSI briefer. Note the details. ACSI personnel told me after Mr. McGiffert's departure that he was always interested in a great deal of detail about what was going on in various localities, including those they considered to be unlikely to involve Federal military support. On the other hand, it should be remembered that we were constantly getting requests from local officials for military assistance, including in some instances offensive weapons, such as guns. In order to be able to respond to these requests, Mr. McGiffert and OGC, required information about the level of disturbances in those cities in order to intelligently make a decision on the request for assistance. The last item is a hand-written sheet showing attacks on police and firearms. Mr. McGiffert became quite concerned about this about the August time-frame.

55. 16 SEPTEMBER 1968—CINFO MEMO FOR SEC ARMY

This CINFO memo details the photographic service rendered during the Convention in Chicago. Note the fact that a four-man special team from Ft. Bragg in civilian clothes was in Chicago from 24 August to 10 September and took quite a few movies and still pictures. I was not aware of this until I found this memo in the Under Secretary's file. Item "d" reports that some photographic coverage was obtained "covertly" by USASAINTC on video tape.

56. 24 SEPTEMBER 1968—USA MEMO

These two memos distribute the "terms of reference" for the DoD Civil Disturbance Steering Committee and DCDPO. Mr. McGiffert conceived of the Committee as a high-level means for keeping Defense officials informed of the Army's progress on civil disturbance planning and as a means of involving defense officials in decision-making. The terms of reference for DCDPO were written by them and are rather broad. We did not have a chance to review them before they were published. Notice item "2d" concerning their functional responsibilities. It states: "Establish and maintain an intelligence center to provide information regarding civil disturbances." Mr. Nitze approved the terms of reference by memo of 18 September 1968.

57. 13 SEPTEMBER 1968—DCDPO MEMO TO USA UPDATING A CIVIL DISTURBANCE FACT SHEET

The fact sheet is not enclosed.

58. 28 SEPTEMBER 1968—DEP SEC DEF MEMO FOR SEC ARMY

This is the famous (or infamous) Nitze memo relating to the Army request for additional counterintelligence and investigative personnel spaces. Note that the additional request was disapproved by the OSD review group "with DIA dissenting" because of "its reservations regarding the extent of Army involvement in domestic intelligence activities and the lack of justification for such a manpower ceiling increase." Nitze on the other hand authorized the interim addition of 100 spaces without providing any additional resources. The memo recognizes the Army's responsibility because of the assignment of the Executive Agent responsibility to the Secretary of the Army for civil disturbance planning. Nevertheless, the emphasis is again placed on obtaining the Justice Department assumption of responsibilities in this area. While the memo talks about the requirement of the Executive Agency. I really believe that it reflects the times. Whether or not the Army was Executive Agent it was clear that the Army had the specific responsibility in the Department of Defense for planning for civil disturbances and after the April disturbances people were quite concerned about a repetition of multiple disorders. However, as time passed, certain Defense officials, primarily in OSD(A) began to doubt the likelihood of future multiple civil disturbances.

59. 14 OCTOBER 1968—OUSA MFR

This MFR concerned action items arising out of the 10 October 1968 Civil Disturbance Steering Committee meeting. It is appropriate at this time to digress to a discussion of the plans for the relocation and expansion of the AOC, as it ultimately came to be called. At the beginning it was the creation of a civil disturbance command center (CDCC). The participants in the control of the April disturbances in the Army Operations Center recognized that it was inadequate for the control of multiple civil disturbances, and that in the event of a simultaneous international contingency and domestic civil disturbance, the Army would be unable to perform both its missions. As a result, a plan developed to build a new Army Operations Center and a collocated and separate but equal civil disturbance command center. The staff prepared and submitted to OSD over Mr. McGiffert's signature a recommendation for a $12 million command center in the basement of the Pentagon. This was denied in June; in July 1968 and thereafter I spent a considerable amount of time developing alternative proposals for the Under Secretary. As I indicated, certain Defense officials primarily Solis Horowitz were adamantly opposed to the creation of a new civil disturbance command center and in fact, I believe, the DCDPO organization itself. At the 10 October 1968 Steering Committee meeting consensus was finally reached on a scaled-down version of the command center. In conjunction with the use of emergency funds Bob Jordan, staff personnel, and I went over to brief two House Committee staffs.

The next items in this section are memoranda for the record on briefings given to the House Armed Services Committee Staff and the House Appropriations Committee Staff, principally by Bob Jordan. In the House the Staff members expressed concern that the Disturbance Center would be used to monitor and "control" the activities of local police. The committee didn't really dwell on the question of our intelligence activities, although we assured them that we relied principally on FBI intelligence raw data input. My recollection is that before we went over to brief them we checked carefully with ACSI on the words to be used in replying to a question of this type. And I'm rather certain that we cleared this phraseology of relying *primarily* on FBI intelligence with ACSI. See item 60 which is an ACSI statement confirming in writing the questions asked by me.

On 25 October 1968 we briefed the Appropriations Staff. The questions centered around our involvement in intelligence activities. Again we emphasized that we relied almost entirely on raw data collected by other agencies, particularly by the FBI. Interestingly, the principal staff member, Mr. Sanders, indicated that he was not concerned about philosophical or political implications, but rather the reasons for building the center and the cost per square foot. The next item is a 25 October 1968 USA memorandum for the Secretary of Defense (prepared by OGC) providing him information concerning the briefings. The memorandum refers only to the "implications of the proposed construction for the armed forces role in civil disturbances." The next item is a 20 February 1969 memorandum transmitting a Congressional Fact Paper to Mr. Sanders on the progress of the DCDPO. Item d(1) of the paper discusses the civil disturbances watch maintained on an around-the-clock basis "to keep abreast of the civil disturbance situation throughout the United States." This was our standard formula. We also flew down to Florida to brief Mr. Sikes, himself, on the plan, but as I recollected the intelligence memo issue did not arise in that briefing.

59A. 30 SEPTEMBER 1968—ACSI COUNTERINTELLIGENCE RESEARCH PROJECT, CIVIL DISTURBANCES CONUS—1968

See earlier discussion at item———.

60. 28 OCTOBER 1968—ACSI MEMO FOR OGC

This memo from ACSI responds to a request on my part. It states that ACSI "is not engaged in penetration of civilian organizations for the purpose of collecting intelligence information on civil disturbances." As I reconstruct the situation, I probably asked ACSI about Army intelligence activities in conjunction with our briefings to the Congressional committees task. I doubt whether I specifically used the phrase "penetration." I'd be interested in seeing the ACSI backup memos regarding my questions and their answers. In any case I'm sure the intent was to verify the primarily through liaison issue.

61. 24 OCTOBER 1968—OUSA MEMO FOR SGS

The memo indicates that the Under Secretary believes that civil disturbance reporting has become far too detailed and is focusing attention on items which are not really of concern to the Army since they are unlikely to relate to our mission of supplying federal forces. The memo indicates a recognition on the Under Secretary's part that the reporting is too broad. Unfortunately, it only attacks a manifestation of the broad reporting and does not attack in any way the root of the problem. I remember COL Carter, the DCDPO Exec, said that the Under Secretary's memo would merely involve his getting a different kind of report and that they would continue to supply detailed reports to the other addressees.

62. 24 OCTOBER 1968—USA MEMO FOR THE CHIEF OF STAFF

This memo requests a briefing on Army intelligence programs as they relate to civil disturbances. The program was to include DOJ briefings at the same time in order to prod them to pick up more intelligence responsibilities. I remember discussing this issue specifically with COL Tackaberry, the action officer. We were beginning at that time to focus attention on our intelligence activities.

63. 1 NOVEMBER 1968—OUSA MEMO FOR USA

This was to be an updating of the 1 April 1968 memorandum provided to the Secretary of Defense. It was never sent. Col Tackaberry and I worked with the DCDPO people on fixing up the report. Notice that the report is forwarded by DCDPO over the signature of General Mather. Page 2 discusses intelligence activities. Our thoughts are included in paragraph 1. Notice that the 3d paragraph discusses the Army policy on intelligence collection and emphasizes liaison activities and limitations on overt observations. My recollection is that in working with the action officers in drafting this paragraph I attempted to write in my understanding of what the intelligence policy was at that time. I recollect that these paragraphs were being coordinated by the intelligence action officer working on the report with the ACSI organization.

An interesting resume of the Steering Committee topics is included at Appendix 1.

64. 2 DECEMBER 1969—DAILY SUMMARY

The daily summary item is included as an example of the kind of reports that were circulating as "intelligence items."

64A. 14 NOVEMBER 1968—DA CIVIL DISTURBANCE PLAN

DCDPO worked up a new civil disturbance plan recognizing their responsibilities for the Executive Agent. The plan was not coordinated with us but OGC Air Force did review it. Notice the expanded annex B and EEI. In February USA and OGC worked up a new statement of the use of force for the LOI. It is at this section, note paragraph 3h, which requires a senior ACSI representative to meet the TF commander and brief him on the current situation. Earlier the Staff had developed the concept of the "Federal Team" in addition to the TF Commander's staff to assist the President's representative at the scene. Interestingly, the first proposal omitted an intelligence representative. We killed this proposal.

65. 15 NOVEMBER 1968—OGC MEMO FOR SGS

The memo refers to a request from the National Commission on the Causes and Prevention of Violence relating to military involvement in civil disturbances. A paper was prepared and sent to the commission on 17 January 1969. We have a copy in our files. The Under Secretary read it before it was released. It did not refer to intelligence activities at all.

66. 5 DECEMBER 1968—DIA GUIDANCE LETTER NO. 68–3

I never saw this item at the time. It appears to be a rather extensive list of "EEI" for determining foreign involvement in domestic civil disturbance matters.

67. 2 JANUARY 1969—DCDPO MEMO CONCERNING SECURITY FOR INAUGURAL ACTIVITY

The next significant civil disturbance related item concerns the Inauguration. Senator Dirksen, head of the Inaugural Committee, by letter dated 18 Dec 1968, requested General O'Malley, CG, MDW, for military troops to be available in case an emergency arose during the inauguration. This precipiated a rather lengthy exercise concerning the prepositioning of military forces in the Washington area. The memo is an internal DCDPO memo discussing the questions related to flying in and arming the troops.

68. 16 JANUARY 1968—NMCC MEMO FOR AOC

This memo authorizes the Army to respond directly to Secret Service requests. It should be remembered that during the inauguration military forces were prepositioned in the city in order to allow us to respond quickly to the possibility of a disorder. In order to buttress our legal authority for acting with the troops in the absence of a Presidential proclamation, we sought to rely on Secret Service authority to call for military assistance. In addition to this extraordinary "assistance" the Department of Defense was also required to provide specific resources to the Secret Service. The messages included in the section relate to that support. You should notice particularly the message DA IN 46189 which discusses in paragraphs "c" and "d" the use of agents inside and outside the buildings during the Inaugural Activity.

69. 17 JANUARY 1969—BLACK BOOK ITEM

This is a resume of the intelligence information concerning the inaugural demonstrations. It gives you an indication of the information being provided by ACSI and the detailed information which the military planners required in order to be able to make the very difficult decisions that they were called upon to make in planning for the Inauguration. It should be remembered that Mr. McGiffert had to decide whether or not the troops manning the cordon in the Capitol area, as well as along the parade route, would be armed. The military recommended strongly that the troops be armed. Mr. McGiffert decided to the contrary on the basis of the information available to him. There were quite a few meetings concerning this and we tried to get as much information as we could about what was likely to happen.

70. 20 JANUARY 1969—OUSA MEMO FOR USA

This is a memo by COL Tackaberry concerning a report that military personnel in uniform led the counterinaugural demonstration. The reference to Sacks and Spiegelman being in the parade requires explanation. [The reference is probably to Peter Rothenberg.] During the demonstrations people from our office marched in the parade and reported back on an Army radio net about what was happening along the parade route. As I remember this turned out to be a primary source of information for the military planners that were in the Army Operations Center. This coverage was requested by Mr. McGiffert who called me while I was manning one office and asked whether we were going to have anybody from our office observing the activities. I replied that we would. That is what he wanted. By the time of the March against Death in late 1969, the DCDPO personnel had found this to be such a useful means of obtaining direct first-hand information that we were superflous. Military officers observing in MP radio cars were reporting back on the status and progress of the march. See item 11 concerning the Pentagon demonstration and the benefits of direct observation.

71. 27 DECEMBER 1968—OUSA MFR

This MFR concerns the Steering Committee meeting of 26 December 1968. Intelligence was a big item at that meeting. DCDPO gave a 40 minute status report concerning its accomplishment. It was about this time that we started our program for reducing the size of the Directorate. The next item is a 14 January 1969 DCDPO memo to USA concerning its accomplishments. It really doesn't have anything to say about intelligence.

72. 24 JANUARY 1969—OGC MEMO FOR THE USA

In this memo Ken Webster reviews for the Under Secretary the status of the video films taken by Army intelligence agents posing as Mid-West Video during the convention in Chicago. The matter is left to rest, until the Bill Downs newscast on 4 April. See item ____.

73. 8 JANUARY 1969—DCDPO MEMO TO USA

During the Steering Committee meeting in December 1968, the Army's intelligence mission was discussed. As a result of that meeting DCDPO was tasked to come up with a mission statement for military intelligence involvement and the 8 January memo represents the Staff's position with respect to a proper mission statement. It attempts to justify the basis for the mission in the DoD Directive 3025.12 and in a JCS publication. It then goes on to rely on Mr. Nitze's memo relating to additional counterintelligence spaces. The mission stated is very broad although it continues the "primarily through liaison with civil agencies' rhetoric. The Tab E intelligence requirements is missing from the paper. It may be in the OUSA files.

74. 24 JANUARY 1969—ACSI MEMO FOR USA

As a result of the activity relating to the films taken by ACSI in Chicago, it appears that Mr. McGiffert asked ACSI for a paper outlining the issues involved and what ACSI hoped to gain from the covert operation. The paper attempts to give the background of the ACSI involvement in civil disturbance intelligence matters and the justification for its activities. Interestingly, General McChristian attributes the first counterintelligence estimate to pressures during the Detroit disturbance. Paragraph 3 notes that "emphasis has continually been placed on the fact that local police officials and the Federal Bureau of Investigation have the primary responsibility for collection of civil disturbance intelligence information." Therefore, says General McChristian, we coordinate closely with FBI and local officials. This of course has been the standard ACSI line, as well as the line voiced by the Army Secretariat on the basis of ACSI input. However, as a result of Mid-West Video we began to question the extent to which we really knew what was going on and the extent to which liaison really did account for the primary source of our intelligence information.

75. 3 FEBRUARY 1969—OGC MEMO FOR USA

This is our transmittal letter to USA providing a civil disturbance mission statement for the Chief of Staff. I don't have the early drafts we prepared. It may be in Bob Jordan's chron file. In any case I believe the memo was revised several times before it was published on 5 February 1969. The draft that we carried down to Mr. McGiffert had been coordinated with ACSI informally and I think it had Colonel Downie's blessing. He may have even shown it to General Franklin or General McChristian. I worked very closely with a Colonel Bauman at that time and I believe it is fair to say that at this point in time ACSI (DA level) was interested in getting out of the civil disturbance intelligence business as much as possible. It was DCDPO that was pushing continuing and increased ACSI and USAINTC involvement. Bob Jordan's memo to USA is interesting because it says he found it impossible to draft an entirely satisfactory mission statement. "The difficulty stems in part from some lack of information about exactly how ACSI collects civil disturbance information," and in part from the absence of satisfactory understandings with DOJ concerning the sharing of the job to be done. The memo recognizes the necessity for some overt collection of information, but we really try to discourage this activity. We require that the Under Secretary approve covert operations. The manpower survey suggested in the McGiffert memorandum is the result of our feeling that we could use it to obtain a great deal of information about ACSI and USAINTC by working through the OSA administrative assistant.

76. 5 FEBRUARY 1969—USA MEMO FOR THE VICE CHIEF OF STAFF

This is the McGiffert memorandum concerning Army intelligence mission and requirements related to civil disturbance. I doubt if there is any need for me to review this paper in detail. A couple of comments are in order, however. On page 5 the reference to anti-war activities and subversion of military personnel refers to the RITA program. I remember an ACSI representative, I believe it was Colonel Downie, reminding me about the necessity for separating the RITA activities from the civil disturbance activities. If we lacked information about civil disturbance intelligence activities, we had next to nothing in the way of information about activities in the RITA area. We may have known about a few covert operations involving military personnel in the coffee houses. (Fort Lewis comes to mind but I cannot date the information.) In order to keep ACSI from objecting to our paper we had to keep the civil disturbance and RITA intelligence activities separate. We never really got to a study of the RITA activities because we first wanted to solve the civil disturbance problem and get the information from the manpower survey.

77. 20 FEBRUARY 1969—GC MEMO FOR DCDPO

We asked DCDPO for explicit information on their intelligence requirements in view of the McGiffert memorandum. Remember that we already had an earlier statement of requirements as part of the 8 January 1969 DCDPO paper at item 73. This memo was to get DCDPO's official reaction to the McGiffert memorandum and also to see if they would follow the guidance to cut back their activities. My ACSI contacts had said DCDPO was dragging its feet and objecting violently to the McGiffert memorandum. The next item in this section is a 21 February 1969 SGS memo to us by General Knowlton in which he complains about our directing a memo out of channels. I remember vividly how he called me up to his office and chewed me out for sending a memo directly to DCDPO. Notice his comment that the Under Secretary's "*guidance* of 5 February is presently *pending* review by the Chief of Staff."

78. 5 FEBRUARY 1969—DCDPO MEMO TO USA

We had been trying to cut back the size of the directorate and this is a memorandum from General Mather saying that he really couldn't do very much because the potential for civil disturbances, in his opinion, had undergone no significant changes during the past year. Compare the ACSI counterintelligence research project estimates. Notice how in paragraph 3 he ties the threat of large scale demonstrations in support of extremist organizations with possible racially oriented disorders. He suggests we wait until we gain the experience of spring and early summer 1969. As I think back on it, I believe that one reason we may have acquiesced in the Staff position about intelligence matters is that no one could predict satisfactorily what would happen during the summer, and it was easy to justify waiting until the summer was over. Another reason was the fact that we sincerely believed that with the new Administration's philosophy, we would be able to get Justice to shoulder the burden. By the same token, I think the Staff believed things would get better for them with a new get tough Administration. That is why they fought so strongly. I have also added to this section a 3 March 1969 SGS memo about the agenda for the Steering Committee meeting.

79. 5 MARCH 1969—VICE CHIEF MEMO TO USA

In this memo General Palmer "reclamas" the McGiffert memorandum. General Palmer takes the position that "full implementation of Mr. McGiffert's recommendations at this time would be not only premature, but unwise." He also rested his argument on DOJ willingness to fill the gaps created by curtailed Army efforts. He makes the same point the Staff made to us: you have to keep an organization in being in order to have it react promptly and efficiently during an emergency. He also cuts us out on the ACSI manpower survey by saying that he had already started it for ACSI itself, and that for USASAINTC it would be very, very difficult to have one. An attached staff paper (prepared by DCDPO) discusses the McGiffert memorandum in detail. [An informal point made by DCDPO staff members to me concerned the fact that McGiffert may have represented a different philosophy and that the new Under Secretary should have an opportunity to act on the matter.] Note paragraph "a," the second section: the ACSI point that CIAB personnel did not really rely on the spot report system, and that this system was developed for Army planners. Paragraph "b" seems to indicate when you read it carefully, that liaison has not been the primary source of intelligence information for the Army. Rather, it seems to imply that on-site observation by MI agents has been the source of the most valuable intelligence. I don't remember really focusing on this issue at the time. I do remember talking with them about the need for the established channels of the communication and working relationships in order to be able to go to the local police authorities and solicit information during an emergency. The extent to which the staff was fighting is indicated by the fact that they even objected to the necessity for Under Secretary of the Army approval before clandestine activities, even though they had to go first to the FBI. Note on page 3 the admission that ACSI could live with the memorandum. It is DCDPO that objects to the reduction in information which they would be able to obtain if the memorandum was implemented. Again all fingers point at the Justice Department. I remember Colonel Carter, the Exec to DCDPO, indicating that he didn't believe the Justice Department would ever accept the responsibility and if they did accept the responsibility that they would never be able to keep up on a 24-hour basis, as required by DCDPO. Notice on page 4 and 5 that DCDPO at that time was not even willing to compromise on their intelligence requirements. They state that the DA plan and the intelligence collection plan states what they need. All in all it is a rather strong statement and one endorsed by the Vice Chief of Staff.

80. 4 MARCH 1969—DCDPO MEMO TO THE GENERAL COUNSEL

This is the DCDPO response telling us to stick it in our ear because the Vice Chief is going to fight the McGiffert memorandum.

81. 7 MARCH 1969—DCDPO MFR

We really didn't have much formal contact with DCDPO during the period they were developing their response to the McGiffert memorandum. [It is interesting that during this period (as the next item discloses) DCDPO was tasking ACSI for a new study of the colleges and universities.] We got our information back-channel through ACSI representatives. The MFR was written jointly by the DCDPO and ACSI (intelligence) action officers. It is a fairly accurate representation of what went on at a meeting between DCDPO and OGC concerning the dead lock on the McGiffert memorandum. Captain Newhall was the head of the DCDPO policy division and one of the real thorns in our side. He is a right wing, stubborn individual, even as Navy captains go. The comment on page 3 that Mr. Jordan agreed that we should continue our present efforts overstates the conclusion. I believe our message was quite clear that we felt that the Army should try to cut back its intelligence activities in any way possible. The paragraph on page 3 relating to our discussion of the EEI should provide some background information concerning the later memo from OGC concerning EEI to be used internally in the Army as well as for soliciting information from DOJ. On page 4 it seems that we concurred in the DCDPO evaluation of the FBI study of the college and university civil disturbance situation. In fact, we agreed that we would not send Justice a request for information at this time. Again, in the conclusion, I thought that we did not completely fold and that we still wanted them to tone down their activities as much as possible. I can't remember whether we received a copy of this memo at the time, but I suspect from our established course of dealing that the action officer probably showed it to me. This copy came from OUSA and has been noted by USA on 23 April 1969.

82. 10 MARCH 1969—GC MEMO TO SGS

This is our memo returning the 22 February 1969 ACSI request that we pass to DOJ a requirement to study campus disturbances. The 22 February memorandum was set-up by ACSI and us. It was arranged as a means of getting ACSI off the DCDPO hook. I believe I indicated to ACSI that we would probably deny the request when they passed it to us.

83. 24 FEBRUARY 1969—OASD(A) LETTER TO HUD

Apparently Charlie Haar asked ASD(A) for our counterintelligence research project. They were particularly interested in our priority cities. The reply was prepared by DCDPO which notes that the report contained some potentially controversial material. The report is included and tabbed, but their test of controversality is far more narrow than mine would be. I cannot tell from the OUSA transmittal whether OASD(A) received a copy of the report. However, I worked periodically with Colonel Clifford and, knowing him, I doubt whether he would have responded without first seeing the report.

84. 10 MARCH 1969—GC MEMO FOR SGS

This transmits AR 500–50 which we extensively revised in coordination with the DCDPO action officer. I remember that ACSI was busy trying to develop a statement of its intelligence mission in connection with the statement of responsibilities in paragraph 12c. Actually, as it turned out, it seems that they didn't include our definition in the printed version of the AR. I also remember that we only found out by accident that DCDPO was staffing this AR and virtually plucked it out of the hands of the printers when it was sent to TAG.

85. 18 MARCH 1969—GC NOTE TO SECRETARY RESOR

This is a talking paper from Bob Jordan to Secretary Resor indicating that he had been discussing matters concerning civil disturbance planning with Mr. Kleindienst, the new Deputy Attorney General. Apparently Mr. Laird had requested that the Army provide a briefing to the DoD Secretariat concerning civil disturbance. Bob gave that briefing; we don't have the briefing paper. The talking paper for the Secretary of Defense discusses a 17 March meeting with Kliendienst. Actually there was a previous meeting. I believe it was a Monday, March 11. I accompanied Bob to both meetings. The first meeting was to establish contact with Mr. Kleindienst and to set up a dialogue on the intelligence item. We had a talking paper that discussed our planning and preparations and relationships with Justice and Mr. Kleindienst seemed genuinely concerned. When we approached the subject of intelligence activities, he was very excited and said when would you like to meet! He then buzzed Mr. DeLoach, the second in command at the FBI, and set up a meeting for the following week.

That is the March 17 meeting referred to in the talking paper. We came to the March 17 meeting with a detailed talking paper that was going to allow us to push the FBI and Justice into the civil disturbance intelligence business. Unfortunately Mr. Kleindienst had thoughts about running the meeting and he started it off with each representative telling about his agency's civil disturbance intelligence activities. The representatives were FBI (DeLoach), IDIU (Devine), Community Relations Service, I believe, Criminal Division and Kleindienst's assistant, George Revercomb. One of the things that got Mr. Kleindienst upset was the description of the IDIU's intelligence activity and the fact that "college girls" were processing the input into the IDIU computer data developing the civil disturbance data base. Mr. Kleindienst couldn't get over the fact that they were relying on "college girls." By the time we got a chance to report, he had already decided on an intelligence board and assigned an initial project to them as indicated in the talking paper. While disheartened, we still thought maybe we could capture the intelligence board. Unfortunately, DeLoach had already captured it. It was at the March 17 meeting that Mr Kleindienst raised the need for a planning document delineating the Attorney General's responsibilities. The next paper is the formal designation of the committee members sent by Mr. Kleindienst.

86. 26 MARCH 1969—SECRETARY OF THE ARMY MEMO FOR SECRETARY OF DEFENSE

This memo transmits the first draft of the Inter-Departmental Action Plan developed by our office and Justice (office of Legal Counsel) at the insistence of Mr. Kleindienst. I don't have a copy of the draft but I am sure there must be one around. It was our thought in drafting this memo to try to put the intelligence burden on the Attorney General once and for all.

87. 31 MARCH 1969—SECRETARY OF ARMY MEMO FOR SECRETARY OF DEFENSE

This is a copy of the Inter-Departmental Action Plan which we negotiated with the office of Legal Counsel, Department of Justice. The memo points out that we were not able to resolve the public affairs responsibility and the civil disturbance intelligence collection and analysis responsibility. The draft presents our version. Note our formulation on page 5: "The Attorney General will be responsible for collecting, analyzing, evaluating and disseminating intelligence bearing upon the probability of any serious disturbance. The Federal Bureau of Investigation will be charged with the task of collecting raw intelligence and transmitting it on a timely basis to the Department of Defense. At the request of the Attorney General, the Department of Army may assist in this effort. However, in order to preserve the salutary tradition of avoiding military intelligence activities on predominantly civilian matters, the Army will not ordinarily be used to collect intelligence (i.e., CIAB activity). This was an area where ACSI felt we had considerable expertise and the FBI had very little.

88. 1 APRIL 1969—SECRETARY OF ARMY MEMO FOR SECRETARY OF DEFENSE

This memo transmits the "final" Inter-Departmental Action Plan to be signed by the Secretary of Defense and the Attorney General for submission to the President. The transmittal memo indicates that we acquiesced in a general statement of the intelligence mission in lieu of our specific statement putting the burden on the FBI. However, we had extracted a promise from the Attorney General to obtain an understanding on the point in the future. Somehow we never were able to get much further on this, although I remember having a number of meetings discussing the matter with Jim Devine of the IDIU and with Jim Turner who was appointed the Chief of Staff of the Attorney General's Civil Disturbance group (similar to our DCDPO). In truth they were really so far behind us from the point of view of planning that they had a great deal to do internally in putting their house in order before they could turn to the acceptance of additional responsibilities. In any case, we later tried to work at them through the action officer level since we had little success at the Department head level.

88A. 14 APRIL 1969—OGC MEMO FOR GC

This is a note by me commenting on the 1 April 1969 Counterintelligence Research Project. The estimate is attached. Note that ACSI was de-emphasizing "leftists and anti-war activities." The message didn't get to DCDPO or the field.

The next two items in this section are miscellanea. A 24 March 1969 ACSI memo concerning an ACLU suit seeking to prevent us from prohibiting military personnel in peace demonstrations. What a view of the world. The other item is a 22 March 1969 memo about the new Secretary of Defense's requirement for an AOC hot line to his office.

89. 15 APRIL 1969—OGC MEMO FOR THE SECRETARY OF THE ARMY

This memo transmits a talking paper concerning the Army's covert intelligence activities during the 1968 convention. The Mid-West Video filming came to light when it was disclosed by Bill Downs during an April 4, 1969 news broadcast. Mr. Resor wanted to discuss the matter with Mr. Laird but the memo tries to dissuade him because it would open up an inquiry into our intelligence activities and these matters still had not been finally resolved. My talking paper discloses four incidents of covert activity during the last year. One would be the Mid-West Video. The only other one I remember concerns MI agents who rode down on the bus either during the Pentagon demonstration or during the counterinaugural. I can't remember what the Secretary ultimately did. The other papers included in this section concern on-going Mid-West Video Actions.

90. 15 APRIL 1969—ACSI MEMO TO THE USA

This was the first quarterly summary of Army intelligence collection activities other than through liaison. It was a first indication we had of the true extent and manner of the Army's intelligence collection activities. As you can see we responded on 22 April 1969 that we found the report very valuable and that one of the difficulties we were having in evaluating our intelligence mission and requirements is "a lack of reliable information, both in the Secretariat and the Staff, concerning the extent of such activities." Either with respect to this report or a later report, Colonel Ulatoski, the Under Secretary's Military Assistant and a former intelligence officer, wanted to recommend that the reporting be discontinued.

91. 24 APRIL 1969—USA MEMO FOR VICE CHIEF OF STAFF

This is Mr. Beal's memo, written principally by us, suspending the operation of certain portions of the McGiffert memorandum. I guess we were naive in assuming that we would be able to effect some reduction in staff activities by our "non-mandatory" statement that the Staff should actively explore every possibility within the Department of the Army for reducing our civil disturbance intelligence collection and production activities. Attached to this memo is a draft of what we sent down to the Under Secretary's office. You might note that the Under Secretary's office added the words "civil disturbance" before "intelligence" in the sentence referred to above.

92. 4 JUNE 1969—ARMY MEMO FOR THE SECRETARY OF DEFENSE

This is a memorandum prepared by our office relating to authority to order Reserve units to active duty for civil disturbance purposes. While the memo does not bear directly on intelligence matters, it does show our concern with the necessity of having adequate forces in the event of multiple civil disturbances. The memo states that the 25 cities planning factor derives from a DoD meeting of 10 April 1968.

93. 14 JUNE 1969—PROBABLE TOPICS OF INTEREST

This is an outline of topics for an urban affairs council meeting to be held at the White House, and is a Justice Department planning paper for that meeting. The Attorney General addressed the council and I believe Bob Jordan and Mr. Beal attended from our Department. I don't have the talking paper Bob Jordan used. Note the item 4 relating to Justice Department evaluation of intelligence and the reference to an intelligence center and intelligence gathering on the last page of the Attorney General's statement. He seems to indicate in that statement that Justice is running the intelligence show; in fact they were not.

94. 16 JUNE 1969—DCDPO MEMO

This memo relates to CIDCON (Civil Disturbance Condition), a program developed by DCDPO for standardizing the alert posture for civil disturbance forces. Note that CIDCON 4, the first increase in alert, requires "increased intelligence monitoring and analysis of the civil disturbance situation."

95. 30 JUNE 1969—CIVIL DISTURBANCE SITUATION REPORT TO SECRETARY OF DEFENSE

This is a report probably used by Mr. Beal to provide information to the Secretary of Defense on the status of civil disturbances in the nation. It discusses the Inter-Departmental Evaluation Committee set up by Mr. Kleindienst. The other items in this section are various intelligence estimates of the period.

96. 27 JUNE 1969—DCDPO MEMO TO USA

This memo provides an updated report of the activities of DCDPO and its accomplishments. Note on page 17 that the intelligence branch of DCDPO is abolished. This is because the DCDPO felt they could get more work if they were able to task ACSI directly through a liaison officer. Note in the last attachment, paragraph "e," the reference to the Inter-Departmental Evaluation Committee for evaluating civil disturbance intelligence. Notice how they characterize it as a committee to "provide the ability to accurately predict civil disorders."

97. 2 JULY 1969—OUSA LETTER TO DIRECTOR OF THE OFFICE OF TELECOMMUNICATIONS MANAGEMENT

The Office of Telecommunications Management, Executive Office of the President, had asked for two copies of our civil disturbance plan but in lieu thereof they were provided only with the communications electronics annex. The next item in this section is a letter to Senator Pastore from Telecommunications which reports on telecommunications capability of the government in connection with civil disturbances.

97A. 23 JULY 1969—OUSA MEMO FOT MR. BEAL

This memorandum concerns a telephone conversation Mr. Beal had with Mr. Vinson, former assistant Attorney General. Mr. Vinson had indicated that he was concerned about the Army's role in domestic intelligence activities and that he understood the Army had "two separate computerized intelligence setups." The memo reports that there are "two data banks" in which civil disturbance related material is stored. One is at Fort Holabird, the other at ACSI, DA. The memo appears to have been prepared by Colonel Ulatoski for the signature of Colonel Grimsley. One difficulty in understanding the memo is that while it talks about computers, it does not specifically refer to "computerized" data banks. I was not aware of the existence of this memo. Remember that Colonel Ulatoski is an intelligence officer and he may have had his own sources.

98. 8 JULY 1969—GC MFR

This memo provides an updated report of the activities of DCDPO and its ASD(PA) decision to have the press visit the new Army Operations Center. We were forced to bring the press to the operations center as a result of Mr. Laird's policy of providing as much information as possible to them. Mr. Leonard at that time passed to Bob Jordan the information about the Justice Department's formal civil disturbance group headed by Jim Turner. It was through this contact with Mr. Leonard that Jim Turner and I began to work together. After the AOC walk-through, Bob Jordan and General Cunningham gave a briefing for the press and the briefing is included. There is a very interesting discussion of our intelligence involvement. I think the questioner was Bill Downs. The next item is a *Washington Post* article on the Operations Center. The last item is an 8 July 1969 OASD (I&L) memo for the Secretary of the Army requesting a briefing and walkthrough of the new operations center for some OSD officials and two people from the National Institute of Law Enforcement, DOJ.

99. 22 JULY 1969—DOJ MEMORANDUM

This memorandum from Mr. Mitchell to Mr. Kleindienst establishes the Department of Justice civil disturbance group. We were not invited to coordinate on this memorandum. The last item in this section is a 7 August 1969 DCDPO memorandum commenting on the Justice Department plan. Note that DCDPO attended the "Law Enforcement Policy Committee" established by the memorandum. Paragraph "e" of the DCDPO memo is interesting because it points out that in developing their plan DOJ had failed to take into account the intelligence responsibilities which we were again trying to lay onto Justice. The memo mentions that we were attempting to work this out on an action officer level with Jim Turner. Besides taking them through the AOC, we visited the CIAB (where we learned the group had a microfilm index to their materials). After that time I kind of dropped out of this but I believe Colonel Porter and Colonel Hon (DCDPO Operations Division) continued these contacts. The work met with litle or no success. The next item relates to communications and electronics assistance we provided to the Justice Department in connection with the improvement of their faciities.

100. 25 JULY 1969—OUSA MEMO TO USA

Colonel Ulatoski, the Under Secretary's Military Assistant, provided Mr. Beal with a second quarterly summary of U.S. Army intelligence activity. He recaps the report and notes at the end "the lower level of spot reports collected 'other than thru normal liaison' is a good indicator of ACSI compliance with the intent of the 5 February and 24 April 1969 USA memorandums." I don't believe that Colonel Ulatoski gave us a copy of this report until a couple of months later. I think at that time Bob Jordan commented on the report that he was not yet satisfied.

101. 18 AUGUST 1969—GC MEMO TO DCDPO

At about this time it became clear that we should release the EEI submitted to us by DCDPO for use with Justice and internally. This was part of our program to keep working on Jim Turner to accept responsibility for intelligence production. Note that again we attempted to encourage the Staff to control and decrease their intelligence activities. That may be why we did not focus on the 2 May 1968 collection plan. It would be interesting to note what effect our memorandum had on the actual status of the collection plan, including specifically the omission of element 1(3). A handwritten note by Bob Jordan to the Vice Chief indicates his understanding that the Staff approved of the approach in the memo (DUSA has a copy).

102. 20 AUGUST 1969—OGC NOTE FOR EXECUTIVE, DCDPO

This memo from me to DCDPO relates a planning exercise of the Office of Emergency Preparedness to put together a planning packet for post civil disturbance assistance to cities. It is included here only as an indication of the continuing interest in some quarters to civil disturbance planning matters.

103. 12 SEPTEMBER 1969—ACSI MEMO TO THE GENERAL COUNSEL

This is a memorandum keeping us apprised of the meetings of the Inter-Departmental Evaluation Committee on civil disturbance. I remember the committee members once telling me that ACSI felt that the FBI would call a meeting whenever they were about ready to release a report anyway. OUSA has full copies of some of the reports.

104. 30 SEPTEMBER 1969—DCDPO MEMO FOR USA

This memo discusses the threat of civil disturbances likely to involve federal forces. Apparently Mr. Beal asked questions relating to guerrilla warfare-type activities and the answer given by the Director, DCDPO is that "DCDPO continues to collect information to determine if there are trends developing in the tactics employed by dissident elements."

105. DCDPO MEMO TO USA RELATING TO FORCE REQUIREMENTS

Apparently DCDPO began at this time to base its force requirements planning on metropolitan areas vulnerable to civil unrest. It relied on the 1 April 1969 ACSI counterintelligence estimate which concluded that racial outbreaks rather than anti-war dissident leftists demonstrations posed the greatest threat to law and order. While it would appear that the DA Staff agencies were coming to the view that anti-war activities were not relevant, the following item providing the 21 October 1969 Quarterly Report indicates that most of the activity is in the demonstration observation field.

106. UNDATED GC MEMORANDUM FOR THE SECRETARY OF DEFENSE

This memo was prepared in our office on a contingency basis in case the Secretary of Defense asked questions about the DoD plans and preparations for the anti-war demonstrations in Washington, D.C., November 13–16, 1969. I don't believe it was sent. As in all our papers relating to civil disturbances and intelligence, an assessment section is included. Remember that active military forces were prepositioned in Federal buildings during that period. Also included in this file is a 10 November 1969 "point paper" for Mr. Beal to brief the Secretary of Defense on the New Mobe demonstration. The last item in this section is an intelligence estimate prepared by ACSI in anticipation of the demonstration.

107. 20 NOVEMBER 1969—DCDPO NOTE FOR OUSA

This is a handwritten note by Colonel Carter trying to limit DSA's access to a recorded civil disturbance status report that DCDPO had. It kind of demonstrates to me something about Carter's personality. It is kind of interesting in the light of the memorandum dated 30 December 1969 put out by the ASA (I&L) concerning industrial security of classified information in the event of civil disturbances and designating the Director, DSA, as the official with responsibility in this area.

108. 15 JANUARY 1970—ACSI MEMO FOR THE USA

This is the Fourth Quarterly Summary of USAINTC collection activities. This report discloses that the overt observation collection activities went way up during the preceding period. Colonel Ulatoski compared the report for each quarter. Colonel Boerger then wrote a memorandum asking for more explicit information about the USAINTC activities. This is the point at which the Pyle article appeared.

I can see that this memorandum should end with the Pyle article. There are a number of documents which are lumped together at the end. They come from the Under Secretary's office and you may or may not have records of them. The most interesting, I think is the 19 August 1970 collection prepared by DCDPO for Colonel Boerger concerning the history of the civil disturbance reporting requirements.

March 30, 1968.

From: DA
To: CGUSCONARC,
CGUSASA AHS VA,
CGUSAINTC Ft. Holabird, Md.
Secret Limited Distribution DA 836371—from ACSI.
Subject: Use of USASA Resources in Civil Disturbances

Reference message, DA 929093, Department of the Army, dated 11 June 1963, subject Monitoring Civil and Amateur Telecommunications During Civil Disturbances in US

1. Above reference is rescinded. USASA units are authorized to monitor domestic communications in support of US Army Forces committed in civil disorder and disturbance operations subject to the restrictions listed below.

2. Authority. Approval will be obtained from the DA by the Commander requesting the support prior to monitor operations. Requests for approval will contain.

a. Forces being supported.

b. USASA resources required.

c. Location of disturbance.

d. Code name of Operations.

e. Brief description of cover to be utilized by the USASA unit.

3. Because the compromise of the fact that USASA units are engaged in monitoring civil communications could be detrimental to the US intelligence effort and could cause adverse publicity to both the US Army and the USASA the following restrictions will apply:

a. *The USASA unit will operate under the guise of other Army units.* Selection of the cover will be at the discretion of the Commander in charge of the over-all civil disturbance operation. Care must be taken to insure the cover is plausible and that all personnel directly involved are fully aware of the cover story. This includes both USASA personnel and those personnel in the cover unit which must be briefed to insure the cover is verified.

b. Knowledge of the over-all monitor operation and distribution of the information obtained will be held to the absolute minimum comensurate with practical operations.

c. USASA personnel will not be used for liaison with civil authorities.

d. Only those civil communications which have an influence on the operations will be monitored.

e. All information associated with these monitor operations will be classified SECRET LIMITED DISTRIBUTION. To facilitate the distribution of information, reports can be downgraded to the classification of the information they contain provided the fact that it was derived from communications is removed.

f. Both the supported command and the USASA supporting unit will submit through their respective command channels to DA a final report on the Monitor operations. The supported commander will evaluate the support rendered, the effectiveness of the cover, and recommendations for future operations. The USASA unit will report on the type communications nets monitored, technical data required and available and recommendations for future operations.

4. This message in no way changes present command channels or concept of USASA Direct Cryptologic Support.

5. CG USASA in coordination with CGUSAINTC will develop and issue necessary downgrading instructions per para 3ee CGUSAINTC in coordination with CGUSCONARC and CGUSASA will determine and issue distribution instructions. UNQUOTE.

6. It is requested that holders of ref (USCONARC, USASA and USAINTC) change the 9th word of 2nd sentence of paragraph 1 from "telecommunications" to read "communications."

Department of the Army,
Office of the General Counsel,
Washington, D.C., 22 March 1971.

Memorandum for Record

Subject: The Background of the Interdepartmental Action Plan for Civil Disturbances of 1 April 1969, Prepared by Robert E. Jordan III, General Counsel, Department of the Army.

I have just completed a screening of a collection of documents relating to the Interdepartmental Action Plan for Civil Disturbances, which was signed by the Secretary of Defense and the Attorney General on 1 April 1969. I believe it would be useful to have a comprehensive memorandum outlining the events which led to the signing of the final memorandum, and to preserve the documents in question in the policy and precedent files of the Office of General Counsel, since there will undoubtedly be occasions in the future when questions of interpretation of other problems may arise.

Early in 1969, when the new Administration came on board, I had several initial conversations with Deputy Attorney General Kleindienst concerning civil disturbance problems. Mr. Kleindienst was quite interested in the civil disturbance area, and concerned that the Federal Government be properly organized to respond in civil disturbance situations.

In March of 1969, during one of my discussions with Mr. Kleindienst, at which Under Secretary Beal may have been present, the subject of a comprehensive memorandum of understanding between the Attorney General and the Secretary of Defense was raised. It was agreed that efforts would be made to draft such a memorandum, with the Office of Legal Counsel representing the Department of Justice' side, and the Office of the Army General Counsel representing the Defense side. Within my office, Milt Hyman was assigned the laboring oar, and he worked primarily with Ed Selig who had been the Office of Legal Counsel's primary working staff lawyer on civil disturbance matters for some time.

The first draft which was produced in the Office of General Counsel is at Tab A. It does not appear that this version was sent to the Department of Justice, although it was probably discussed between Milt Hyman and Ed Selig. It bears a date of 20 March 1969.

At Tab B is a second draft of the Memorandum for the President, which bears the pencil notation in Mr. Hyman's writing in the upper right-hand corner that it is the draft which was furnished to the Department of Justice. My recollection is that we furnished an initial draft, and that Justice was then to prepare more or less of a counter-draft drawing upon our materials. The date of submission of the draft to the Department of Justice is not noted, but it must have been approximately 22 March 1969, since we find in the files the item at Tab C, which is a memorandum to the Attorney General and Deputy Attorney General from the Assistant Attorney General (Office of Legal Counsel) transmitting the initial Justice draft. Although the Justice draft is organized somewhat differently than the initial Army version, it obviously draws upon the Army version in a number of respects.

At Tab D are a number of memoranda reflecting our efforts to coordinate responses to the Justice draft within the Department of the Army. My 25 March 1969 memorandum to the Secretary and Under Secretary notes the joint effort which produced the Justice draft, but also notes that Justice had introduced some minor variations without our concurrence. It also notes that there was considerable pressure to accelerate the paper. This pressure, as I recall, was stimulated primarily by a concern that there might be substantial demonstrations in early April on the anniversary of the death of Dr. Martin Luther King. The Justice people felt strongly that they wanted the plan approved, if possible, in advance of such potential disturbances.

Comments were received from the Army Staff on 26 March 1969, see Tab E. (Tab E omitted). On 29 March, we submitted informally to the Department of Justice, Office of Legal Counsel, some changes a number of which are clearly derived from the Army Staff comments, and others of which were added as a result of Secretariat review. See Tab F.

The items at Tab G are memoranda from the Secretary of the Army to the Secretary of Defense on 31 March and 1 April 1969. The first memorandum indicates that we had by and large achieved the concurrence of the Office of Legal Counsel in our proposed revisions, with the exception of those on public affairs responsibilities and civil disturbance intelligence collection and analysis function. The memo indicates that Under Secretary Beal was to explore the areas with Deputy Attorney General Kleindienst. The second memorandum, of the subsequent day, advises the Secretary of Defense that we have been unsuccessful in obtaining our way on the two points. By this time, the Attorney General had already signed the memorandum. Mr. Laird also signed, and the material at Tab H is a copy of the final Interdepartmental Plan along with a note from Deputy Attorney General Kleindienst with Instructions concerning having the plan delivered to Mr. Ehrlichman, then Counsel to the President, to be taken up with the President.

The item at Tab I includes a copy of an internal White House memorandum which shows the President's approval of the plan, along with his handwritten comment "Good Planning."

A couple of minor points with respect to the Interdepartmental Plan probably deserve further discussion. In the course of examining the text of the Plan, we discovered in May 1969 that the Justice Department, in its final retyping, had omitted a paragraph concerning responsibilities of improving the capability of civilian law enforcement and the National Guard of the states. There was an exchange of correspondence between Under Secretary Beal and Deputy Attorney General Kleindienst, which resulted in an agreement that the Plan would be annotated to insert the omitted paragraph. At Tab J is the various correspondence relating to this matter.

In August of 1969, the Attorney General initiated a round of correspondence concerning the public affairs portion of the Interdepartmental Plan. As the earlier correspondence indicates, public affairs responsibilities had been one of the two areas at issue in the final round of negotiations for the signing of the Plan and had not been satisfactorily resolved from a Department of Defense standpoint. The net results of all of the correspondence was that both Justice and the Defense Department agreed to leave the Plan as it was. The relevant documents are accumulated at Tab K.

The item which has been of greatest interest in recent months concerning the Plan has been that portion of it dealing with intelligence responsibilities. I will not seek to detail here all of the various changes in language relating to intelligence responsibilities, but an examination of the original Army draft at Justice will show that it recognized the problem of military intelligence activities with respect to essentially civilian matters, and sought to assign intelligence collection responsibilities to the Department of Justice. The draft of the Office of Legal Counsel which came back to us on 25 March 1969 was not quite as strong in its language concerning intelligence responsibilities, but still recognized the problem. The final version of the Plan is quite ambiguous, and omits all references to desirability of reducing military intelligence activities. My recollection is that Mr. Kleindienst insisted on the ambiguous language. It was our feeling that when the proposed language was shown to the FBI, it strongly protested, and that this was the reason for the change in language.

Because there had been some apparent dispute over whether the Department of Defense ever raised the intelligence question with Justice, I am attaching at Tab L a copy of my note of 29 March 1969 to the Deputy Attorney General, Mr. Kleindienst, in which I pointed out that there were unresolved issues requiring his personal attention relating to public affairs responsibilities and the division of intelligence responsibilities. Based on a review of the documents appended to this memorandum, it should be clear that the Army recognized the sensitivity of military intelligence operations in the civil disturbance arena, and sought to shift the responsibility for at least the collection portion of such activities to the Department of Justice, but was unsuccessful in achieving Justice concurrence.

Attachments: Tabs A–L.

Robert E. Jordan III,
General Counsel.

Tab A

Memorandum for the President

Subject: Executive Department Relationships for Civil Disturbance Planning and Operations.

I. INTRODUCTION

Within the past two years federal armed forces have been deployed four times in civil disorder situations at the direction of the President to assist the states in restoring law and order. Prior to the first such incident in Detroit in 1967, twenty-four years had elapsed since the last such occasion. The maintenance of law and order and the control of civil disturbances is primarily the responsibility of state and local governments. The use of federal armed forces in such situations is a measure of last resort and we recognize the historical reluctance of the Federal Government to use its armed forces for such purposes. Department of Defense and Department of Justice efforts, and encouragement, have resulted in improved planning and preparedness of the states and municipal localities, as well as the State National Guard, to respond effectively to quell civil disturbances in their localities. Nevertheless the history of past civil disorders and the potential for future disorders require that the Federal Government be prepared to effectively discharge its responsibilities to the states when ordered by the President.

The purpose of this joint memorandum is to present for your consideration an appropriate division of responsibilities for civil disturbance planning and operations in which the Attorney General and Secretary of Defense have concurred. Customarily the Attorney General, as the Chief Law Enforcement Officer of the Federal Government, has acted as a coordinator of federal efforts relating to civil disturbances. This designation has never been formalized in a written memorandum, although it clearly would be desirable for civil disturbance responsibilities to be clarified well in advance of an actual disorder. We believe this matter merits your attention because of the serious policy and political ramifications of civil disturbance operations and because you may be required to act on a request for assistance.

II. LEGAL BACKGROUND

As President and Commander-in-Chief of the Armed Forces you have certain inherent authority under the Constitution to use federal armed forces in case of domestic violence or other civil disturbances. The exercise of this authority customarily does not require Presidential action for historical practice has sanctioned the use of military forces by the Secretaries of the Military Departments to protect federal property and functions from interference. The March on the Pentagon in October 1967 is a recent example of the exercise of this authority. A general limitation on the use of military forces reflecting the historical resistance to the use of federal armed forces should be noted. The Posse Comitatus (18 U.S.C. 1385) prohibits the use of the Army or Air Force to execute federal, state or local laws, except as authorized by the Constitution or Act of Congress.

The most important statutory authority concerning the use of federal armed forces to control domestic violence and civil disturbances is found in Chapter 15 of Title 10, United States Code. That chapter provides for the use of federal armed forces to aid civil authorities at the request of a state governor or legislature (10 U.S.C. 331), to enforce the laws of the United States, (10 U.S.C. 332) and to protect the civil rights of citizens within any state (10 U.S.C. 333).

Section 331 is by far the most important section from the standpoint of controlling major civil disturbances. There are three basic prerequisites for validating a request for federal military assistance under 10 U.S.C. 331. First, a situation of serious domestic violence must exist within the state. Second, the violence must be such that it cannot be brought under control by the law enforcement resources available to the state, including local and state police forces and the National Guard in militia status. Third, the legislature, or the governor if the legislature cannot be convened, must request the President to employ federal armed forces to bring the violence under control.

Upon receiving the request, the President under the terms of the statute and the historical precedents must exercise his own judgment as to whether federal military forces will be sent to the area. Should the President decide to honor the request, he is required by 10 U.S.C. §334 to issue a Proclamation calling upon the rioters to disperse. This Proclamation uses certain formal time-honored language originally drafted by Attorney General Brownell, and in the draft document attached at Tab A for your familiarization we have seen no reason to make significant changes.

Customarily after signing the Proclamation, within a matter of minutes an Executive Order is signed by the President designating responsibilities and indicating the actions to be taken to restore law and order. For reasons that will become more apparent below, past Executive Orders have conferred full authority upon the Secretary of Defense. Further, rather than merely citing 10 U.S.C. 331 as the legal basis for the executive action to be taken, legal authority has been stated rather generally. The draft Executive Order attached at Tab B differs in many particulars from past Executive Orders, but most significantly because it recognizes and details the responsibilities of the Attorney General vis-a-vis the Secretary of Defense.

III. EXECUTIVE DEPARTMENT RESPONSIBILITIES

There are four distinct phases which can be identified with respect to civil disturbance planning and operations and Executive Department responsibilities can be related to them. Phase One is before any disturbances occur. During this phase civil disturbance planning and preparation takes place. From the military standpoint this planning involves the training, equipping, and predesignation of the potential civil disturbance control forces. Operations plans are prepared, alert and movement procedures determined, and command and control arrangements established and exercised. Within the Department of Defense, primary responsibility for such preparations has been placed on the Secretary of the Army, subject to the general supervision of the Secretary of Defense. The Secretary of the Army is the Executive Agent for the Department of Defense for civil disturbance matters. Within his Department there is a Directorate for Civil Disturbance Planning and Operations which serves him and the Army Chief of Staff as the primary military staff agency for such matters. The status of military planning for the control of civil disturbances was recently reviewed and we believe you can be assured that the Department of Defense is prepared to respond effectively and on a timely basis to Presidential orders to control civil disturbances.

Not all planning is military planning during Phase One. within the Department of Justice legal authorities and general administration policies governing the use of Federal military forces need to be clarified. Procedures to ensure the effective administration of justice in the locale in the event of civil disturbances must be established. Of particular importance is the intelligence effort. This intelligence effort, while it presently does not permit us to predict civil disturbances, nevertheless enables us to monitor emerging disorders, note civil disturbance trends and identify dissident elements which may be involved in fomenting violence and disorder. Given the law enforcement responsibilities of the Attorney General, and the resources of the Federal Bureau of Investigation at his disposal, as well as considering the inadvisability of extensive military intelligence activities in the civilian community, we believe it is appropriate for the Attorney General to have responsibility for civil disturbance intelligence efforts. Further, aggressive criminal prosecution of criminal dissidents identified by intelligence efforts may reduce the potential for further disorders.

While it is clear that civil disturbance military planning should be under the cognizance of the Secretary of Defense and the Secretary of the Army, Executive Agent, we believe it is equally important that such planning take place under the general supervision of the Attorney General (or the Deputy Attorney General acting for him) who will supply the administration policy guidelines within which the military planning can take place.

Phase Two is an emerging situation during which actual civil disturbances are occurring. The intensity of a disorder would require the commitment of National Guard troops in a state militia role at the direction of a governor. As a situation deteriorates, federal decisions will be required concerning the alert and possible prepositioning of federal armed forces closer to a possible objective city where a civil disturbance is taking place. Generally speaking prepositioning is inadvisable prior to the receipt of at least a preliminary request for federal assistance. Increased alert and prepositioning are means to reduce the lead time required for movement and before federal armed forces, should they be authorized, will be able to effectively participate in controlling a disturbance. While some of these actions to ensure the readiness of active forces, such as changes in the response times of federal forces targeted for initial civil disturbance control duty, can and should be the responsibility of the Department of the Army, others, such as the prepositioning of federal troops, are highly unusual actions which will be undertaken only with the concurrence of the Attorney General.

The Attorney General should be designated to receive preliminary requests from the state governors for federal military assistance. He will screen them for legal sufficiency and, after consultation with Department of Defense officials on the gravity of the situation, prepare recommendations concerning the approval of a formal request for military forces.

During this emerging situation when it appears that a request for federal assistance may be forthcoming, it may be advisable for an advance party of federal civilian and military officials to be dispatched to the scene of the disorder to make an on-site appraisal of the situation. In addition to the military members of this team, an individual designated by the Attorney General will assist in this on-site reconnaissance and make recommendations to the Attorney General.

It should be noted that the prepositioning of federal armed forces can be ordered without a concurrent decision that they will be committed at the scene of the disorder. Prepositioning will allow you to defer the decision to commit federal armed forces until the capabilities of the state resources can be more fully determined. The Attorney General will be prepared to make recommendations to you concerning prepositioning of forces.

The decision to commit federal forces is yours, based on such counsel as you request. Since a decision to commit federal forces will require you to execute the necessary Proclamation and to issue an Executive Order, we believe it would be desirable for you to designate a member of your personal staff who will be familiar with civil disturbance preparations and procedures. The Attorney General is responsible for seeing that you receive at the appropriate time a properly prepared Proclamation and Executive Order for signature.

During the third phase federal armed forces are committed at the scene of the disorder pursuant to an Executive Order issued by you. Generally at the same time the National Guard is federalized pursuant to the Executive Order to ensure unity of command. The employment of federal armed forces is essentially an exercise of military power under your authority as Commander-in-Chief of the Armed Forces. These essentially military operations will be the responsibility of the Secretary of Defense and, as indicated above, under established Department of Defense procedures, the Secretary of the Army. As the President's alter-ego with over-all federal responsibilities for civil disturbance matters, the Attorney General will provide general policy guidance to the Secretary of Defense concerning the conduct of these military operations. As indicated, the Attorney General will normally appoint a personal representative (the Senior Civilian Representative of the Attorney General) to act as his eyes and ears at the scene of the disorder, unless of course, you desire to designate such an individual yourself. While the Attorney General's representative will have responsibility for Department of Justice matters such as the administration of justice in the affected area, we believe it is important to preserve the military chain of command within the Department of Defense. Therefore formal accountability for the conduct of the operations involving he use of armed forces will be with the Secretary of the Army. The military commander is instructed to consult with the Senior Civilian Representative of the Attorney General concerning significant developments. Further, as provided for in the Executive Order, the Attorney General will issue such policy guidance as he deems appropriate to the Secretary of the Army who will in turn disseminate such directions to the appropriate commanders at the scene. Reenforcement of the units deployed to control the disorder will be undertaken with the concurrence of the Attorney General.

The fourth phase involves the withdrawal of federal forces. As the employment of federal military forces succeeds in bringing the civil disturbance under control, it will be necessary to decide when to withdraw federal units and defederalize the National Guard. Both the military commander and the Senior Civilian Representative of the Attorney General at the scene of the disorder will make recommendations to their respective superiors concerning the timing of this action. The timeliness of the withdrawal may depend to some extent on the attitudes and resources of the local authorities. While this decision is the converse of the decision to commit Federal troops made during Phase Two discussed above, the withdrawal decision does not require Presidential action. Given the Attorney General's responsibilities during Phase Two, we believe it is appropriate that he make the final determination concerning the readiness of the local civil authorities to resume full responsibility for the maintenance of law and order within their locality.

IV. DISTRICT OF COLUMBIA.

The situation with respect to civil disturbances within the District of Columbia is somewhat different than that outlined above. Pursuant to section 39–112 of Title 39 of the District of Columbia Code you are the Commander-in-Chief of the militia, including the National Guard, of the District of Columbia. Consequently, section 39–603, Title 39 of the District of Columbia Code, places you in the same relationship to the Mayor and Marshal of the District of Columbia as is the relationship between a governor and the municipal authorities of his state. Upon their request you may aid them in suppressing violence by ordering the employment of the state militia. The legal procedures involved do not require a Proclamation or Executive Order. There are practical limitations on this procedure, however, because the District of Columbia code fails to provide for adequate medical or disability benefits for Guardsmen who may be killed or injured while performing riot duty and there is no money budgeted within the District of Columbia budget to pay such troops that may be ordered out pursuant to your authority as Commander-in-Chief. The Department of Justice and the Department of the Army will seek remedial legislation from Congress to correct this situation. In the past, in order to overcome these deficiencies of the District of Columbia Code with respect to benefits and pay, a practice has developed under which the Commanding General of the District of Columbia orders the National Guard to perform duty to assist the Metropolitan Police, particularly in controlling traffic. Pay and benefits are provided for by authorizing federally recognized National Guard training drills. However, in the case of a serious civil disturbance, the use of such procedure is of questionable legality.

With respect to the District of Columbia we believe the procedures which provide for the Attorney General to be the overall coordinator for civil disturbance matters should apply. The Attorney General is establishing contact with the appropriate officials within the District of Columbia with law enforcement responsibilities in order to clarify civil disturbance responsibilities and relationships. In the event of a civil disturbance within the District of Columbia, the Attorney General will be prepared to make recommendations to you concerning the appropriate level and means of federal response in the event Presidential action may be required.

V. CONCLUSION

In summary, we recommend that you approve the following responsibilities for civil disturbance planning and operations:

1. The Attorney General, as the President's alter-ego, will be responsible for coordinating all federal efforts relating to civil disturbance matters.
2. During Phase One, the planning phase, the responsible Departments will ensure their readiness, subject to the general guidance of the Attorney General.
3. During the Phase Two period of an emerging civil disturbance, the Attorney General will be responsible for approving the prepositioning of Federal forces, designating a personal representative at the scene of a disorder, and making recommendations to you concerning the advisability of honoring a request for Federal assistance.
4. During Phase Three, when a Federal military force is committed to controlling a civil disturbance, the Secretary of Defense (Secretary of the Army) will be responsible for restoring law and order within the disturbance locale, subject to such general guidance as the Attorney General may give him.
5. During the Phase Four period of withdrawal of federal forces, the Attorney General will determine when local officials can assume responsibility with their local resources and Federal forces can be withdrawn.

JOHN N. MITCHELL,
Attorney General.
MELVIN R. LAIRD,
Secretary of Defense.

TAB B

MEMORANDUM FOR THE PRESIDENT

Subject: Executive Department Relationships for Civil Disturbance Planning and Operations.

I. INTRODUCTION

The maintenance of local law and order, and the control of civil disturbances when there is a breach of law and order, is primarily the responsibility of state and local governments. Generally speaking, state and local governments have proven equal to the responsibility. Thus, in the history of our country, although the National Guard has been employed hundreds of times in its state militia status, the use of federal armed forces to restore law and order has been an infrequent occurrence. A historical review reveals that, (leaving out situations arising in the District of Columbia, where special problems are presented) state authorities requested federal assistance approximately 15 times prior to 1967. On five occasions these requests were refused because the President concluded that the requirements for federal assistance, discussed below, had not been met.

History therefore discloses that the use of federal armed forces to control local disorders is a measure of last resort, a measure which previous Presidents have been reluctant to take in the absence of a clear showing of need.

Prior to July 1967 the most recent occasion of federal assistance at the request of a governor was in 1943 in Detroit. July 1967 witnessed the dispatch of federal military forces again to Detroit to control the disorders there, and April 1968 witnessed the dispatch of active armed forces to both Chicago and Baltimore at the request of the respective governors, as well as to Washington, D.C. At the same time federal military forces were employed in these cities, there were simultaneous disorders in many other cities throughout the country, including some in which the situation very nearly required the commitment of federal forces.

Following the Detroit disorders in 1967, the Department of Defense and the Department of Justice cooperated in efforts to improve the planning and preparedness of the states and the cities, as well as the state National Guard. This effort was accelerated following the April 1968 disorders, with particular emphasis on the need to plan for simultaneous disorders in a number of cities.

While it is entirely possible that federal military forces may never again be required to control local disorders, the recent history of civil disorders and the potential for future disorders of unpredictable magnitude require that the Federal Government be prepared to effectively discharge its responsibilities to the states when directed by the President.

The purpose of this joint memorandum is to propose for your consideration an appropriate division of responsibilities for civil disturbance planning and operations in which the Attorney General and the Secretary of Defense have concurred. In the past two years, the Attorney General, as the Chief Law Enforcement Officer of the Federal Government, has acted as a coordinator of federal efforts relating to civil disturbances. His role has never been formalized by a written charter. We believe it is desirable for civil disturbance responsibilities to be clarified well in advance of an actual disorder. We believe this matter merits your attention because of the serious policy and political implications of civil disturbance operations, and because you may be required, on short notice, to act on a request for assistance.

II. LEGAL BACKGROUND

As President and Commander-in-Chief of the Armed Forced you have certain inherent authority under the Constitution to use federal armed forces in case of domestic violence; Article IV, Section 4 of the Constitution provides:

"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

This authority, along with that of the President to "take Care that the Laws be faithfully executed," is implemented in Chapter 15 of Title 10, United States Code. That chapter provides for the use of federal armed forces to aid civil authorities at the request of a state governor or legislature (10 U.S.C. 331), to enforce the laws of the United States (10 U.S.C. 332) and to protect the civil rights of citizens within any state (10 U.S.C. 333).

Section 331 is by far the most important section from the standpoint of controlling major civil disturbances. There are three basic prerequisites for validating a request for federal military assistance under 10 U.S.C. 331. First, a situation of serious domestic violence must exist within the state. Second, the violence must be such that it cannot be brought under control by the law enforcement resources available to the state, including local and state police forces and the National Guard in militia status. Third, the legislature, or the governor if the legislature cannot be convened, must request the President to employ federal armed forces to bring the violence under control.

The authority of Chapter 15 provides an exception to the general criminal prohibition of 18 U.S.C. § 1385, the so-called Posse Comitatus Act, which bars the use of active Army and Air Force personnel "to execute the laws." Another important exception is the recognized right to use active armed forces to protect federal property and functions from interference. The March on the Pentagon in October 1967 is a recent example of the exercise of this authority.

With respect to a request for assistance to a state under section 331: Upon receiving the request, the President under the terms of the statute and the historical precedents must exercise his own judgment as to whether federal military forces will be sent to the area. Should the President decide to honor the request, he is required by 10 U.S.C. § 334 to issue a Proclamation calling upon the rioters to disperse. This Proclamation uses certain formal, time-honored language originally drafted by Attorney General Brownell, and in the draft document attached at Tab A for your familiarization we have seen no reason to make significant changes.

Customarily after signing the Proclamation, within a matter of minutes an Executive Order is signed by the President designating responsibilities and indicating the actions to be taken to restore law and order. For reasons that will become more apparent below, past Executive Orders have conferred full authority upon the Secretary of Defense. Further, rather than merely citing 10 U.S.C. 331 as the legal basis for the executive action to be taken, legal authority has been stated rather generally. The draft Executive Order attached at Tab B differs in many particulars from past Executive Orders, but most significantly because it recognizes and specifies the responsibilities of the Attorney General as well as those of the Secretary of Defense.

III. EXECUTIVE DEPARTMENT RESPONSIBILITIES

There are four distinct phases of civil disturbance planning and operations and Executive Department responsibilities can be related to them. In *Phase One*, the period prior to an actual disturbance, civil disturbance planning and preparation takes place. From the military standpoint this planning involves the training, equipping, and predesignation of the potential civil disturbance control forces. Operations plans are prepared, alert and movement procedures determined, and command and control arrangements established and tested. Within the Department of Defense, primary responsibility for such preparations has been assigned to the Secretary of the Army, as Executive Agent, subject to the general supervision of the Secretary of Defense. Within the Department of the Army there is a Directorate for Civil Disturbance Planning and Operations which serves the Secretary and the Army Chief of Staff as the primary military staff agency for such matters. The status of military planning for the control of civil disturbances was recently reviewed, and we can assure you that the Department of Defense is prepared to respond effectively and on a timely basis to Presidential orders to control civil disturbances.

Not all preparatory planning activity during Phase One is military planning. Within the Department of Justice legal authorities and general administration policies governing the use of Federal military forces are reviewed. Procedures to ensure the effective administration of justice in the locale in the event of civil disturbances must be established. Of particular importance is the intelligence effort, which while it presently does not permit us to predict civil disturbances, nevertheless enables us to monitor emerging disorders, note civil disturbance trends and identify dissident elements which may foment violence and disorder.

The previous Administration never clarified responsibilities for the important intelligence collection effort which is an essential part of federal activities in Phase One. Currently, the Federal Bureau of Investigation collects and makes available a large amount of information on actual disorders and on persons engaged in disturbance-related conduct which might constitute a federal crime. Information from the FBI and from other Justice Department sources, such as United States Attorneys, is available to the Inter-Divisional Information Unit (IDIU) in the Justice Department. At the same time, the Army has been utilizing the U.S. Army Intelligence Command, which is principally a counter intelligence field organization, to relay civil disturbance information for use by Department of Defense officials. This information is also made available to the Justice Department.

Intelligence operations involve the collection, analysis, and dissemination of information. Collection activities involve principally contacts with state and local law enforcement officials and other local leaders. As you know, the FBI has a large network of offices throughout the United States which is daily involved in liaison activities with the kinds of officials who are in a position to furnish information relating to civil disturbances. We believe that the Federal Bureau of Investigation should be formally assigned primary responsibility for collecting, and furnishing on a timely basis to other concerned agencies, raw intelligence. Although the Army Intelligence Command could perform this function, the salutary tradition of avoiding military intelligence collection activities in predominantly civilian matters reinforces our view that this responsibility belongs with the FBI.

The analysis of information is also important. Traditionally the FBI has not performed evaluations of information. It appears that the evaluation capability of the Army Intelligence structure should be made available to assist the Department of Justice in the evaluation effort. The Deputy Attorney General has already assumed the initiative in this field by designating an *ad hoc* evaluation group composed of four representatives of the Department of Justice and one from the Department of the Army. This *ad hoc* group will also address the problem of assuring adequate and timely dissemination of intelligence.

We believe that civil disturbance military planning should continue under the cognizance of the Secretary of Defense, but that such planning should take place under the general overview of the Attorney General or his designee, who will provide administration policy guidelines within which the military planning can take place.

Phase Two is an emerging situation during which actual civil disturbances are occurring. If the situation became serious enough to require the commitment of National Guard troops in a state militia role, federal decisions will normally be required concerning the alert and possible prepositioning of federal armed forces closer to a possible objective city where a civil disturbance is taking place. Generally speaking prepositioning is inadvisable prior to the receipt of at least a preliminary request for federal assistance. Increased alert and prepostioning are means to reduce the delay between Presidential approval of a formal request for federal armed forces, and the actual commitment of those forces, in the streets, to control a disturbance. While some of these actions to ensure the readiness of active forces—such as unobtrusive changes in the alert times of federal forces targeted for initial civil disturbance control duty—can and should be the responsibility of the Department of the Army, others, such as the prepositioning of federal troops, are significant actions which will be undertaken only with the concurrence of the Attorney General.

The Attorney General should be designated to receive preliminary requests from the state governors for federal military assistance. He will screen them for legal sufficiency and, after consultation with Department of Defense officials on the gravity of the situation, prepare recommendations concerning the approval of a formal request for military forces. Attorney General Clark wrote to the governors in 1967 outlining procedures for seeking federal assistance. The Attorney General will direct a new letter to all governors to assure that current incumbents understand the federal role and the procedures to be followed.

During this emerging situation, when it appears that a request for federal assistance may be forthcoming, it may be advisable for an advance party of federal civilian and military officials to be dispatched to the scene of the disorder to make an on-site appraisal of the situation. In addition to the military members of this team, an individual designated by the Attorney General will assist in this on-site reconnaissance and make recommendations to the Attorney General.

The prepositioning of federal armed forces can be ordered without a concurrent decision that they will be committed at the scene of the disorder. Prepositioning will allow you to defer the decision to commit federal armed forces until the capabilities of the state resources can be more fully determined, without taking an excessive risk that federal assistance will not be available on a timely basis. The Attorney General will be prepared to make recommendations to you concerning prepositioning of forces.

The decision to commit federal forces is yours, based on such counsel as you request. You may wish to designate a member of your personal staff who will be familiar with civil disturbance preparations and procedures. The Attorney General is responsible for seeing that you receive at the appropriate time a properly prepared Proclamation and Executive Order for signature.

In *Phase Three*, federal armed forces are committed at the scene of the disorder pursuant to an Executive Order issued by you. Generally at the same time the National Guard is federalized pursuant to the Executive Order to ensure unity of command. The employment of federal armed forces is essentially an exercise of military power under your authority as Commander-in-Chief of the Armed Forces. These essentially military operations will be the responsibility of the Secretary of Defense. However, as the cabinet member with overall federal responsibility for law enforcement policy, the Attorney General will provide general policy guidance to the Secretary of Defense concerning the conduct of these military operations. The Attorney General will normally appoint a personal representative (referred to as the Senior Civilian Representative of the Attorney General) to act as his eyes and ears at the scene of the disorder, unless you desire to designate such an individual yourself. While the Attorney General's representative will have the responsibility for Department of Justice matters such as the administration of justice in the affected area, we believe it is important to preserve the military chain of command within the Department of Defense. Therefore formal accountability for the conduct of the operations involving the use of armed forces will be with the Secretary of the Army who will issue any necessary order to military commanders involved. Military commanders will be instructed to consult with the Senior Civilian Representative of the Attorney General concerning significant developments. Further, as provided for in the Executive Order, the Attorney General will issue such policy guidance as he deems appropriate to the Secretary of the Army. Major decisions such as the reinforcement of the units deployed to control the disorder will be undertaken with the concurrence of the Attorney General.

Phase Four involves the withdrawal of federal forces. As the employment of federal military forces succeeds in bringing the civil disturbance under control, it will be necessary to decide when to withdraw federal units and defederalize the National Guard. Both the military commander and the Senior Civilian Representative of the Attorney General at the scene of the disorder will make recommendations to their respective superiors concerning the timing of this action. The timeliness of the withdrawal may depend to some extent on the attitudes and resources of the local authorities. While his decision is the converse of the decision to commit federal military forces made during Phase Two discussed above, the withdrawal decision does not require formal Presidential action. We believe it is appropriate for the Attorney General to make the determination, subject to your instructions, concerning the ability of the civil authorities to resume full responsibility for the maintenance of law and order within the affected area.

IV. DISTRICT OF COLUMBIA

The situation with respect to civil disturbances within the District of Columbia is somewhat different than that outlined above. Pursuant to section 39–112 of the District of Columbia Code you are the Commander-in-Chief of the militia, including the National Guard, of the District of Columbia. Consequently, section 39–603, of the District of Columbia Code, establishes between you and the Mayor of the District of Columbia a relationship much like that between a governor and the municipal authorities of his state. You may aid District of Columbia authorities in suppressing violence by ordering the employment of the D.C. National Guard in its militia status. This procedure does not require a Proclamation or formal Executive Order.

There are currently some deficiencies in the statutory and funding structure affecting the District of Columbia National Guard which need to be resolved. The Department of Defense and Department of Justice are currently addressing these problems and will make the necessary administrative adjustments as well as recommend necessary legislation.

We believe the practice of having the Attorney General serve as your overall coordinator for civil disturbance matters should apply in the District of Columbia. The Attorney General is establishing contact with appropriate officials within the District of Columbia in order to clarify civil disturbance responsibilities and relationships. In the event of a civil disturbance within the District of Columbia, the Attorney General, in consultation with the Secretary of Defense, will be responsible for federal activities to restore order. The Attorney General will determine the appropriate level and means of federal response. In the event steps requiring Presidential approval appear necessary, he will make appropriate recommendations to you.

Since 1949, responsibility for administration of the D.C. National Guard has been assigned to the Secretary of Defense pursuant to Executive Order 10030. In view of the military nature of the National Guard, it appears prudent to continue this arrangement, in order that the Guard's force structure and personnel, equipment and training requirements can receive appropriate supervision. This arrangement with respect to the D.C. National Guard was not affected by the reorganization plan which restructured the District of Columbia Government in 1967. In the event of actual civil disturbance operations, we believe that the D.C. National Guard should be under the operational control of an authority designated by the Secretary of Defense, acting for you in your role as Commander-in-Chief of the District of Columbia National Guard. In order to clarify responsibilities for the D.C. National Guard, and to have a current statement of authorities representing the position of your Administration, it would be desirable to promulgate a new Executive Order. If you approve, he Attorney General will provide a properly coordinated Executive Order which satisfies these objectives.

V. CONCLUSION.

In summary, we recommend that you approve the following responsibilities for civil disturbance planning and operations:

1. The Attorney General will be responsible for coordinating all federal efforts relating to civil disturbance matters.
2. During Phase One, the planning phase, both Departments will ensure their readiness, subject to the general guidance of the Attorney General. The FBI will be primarily responsible for collecting civil disturbance intelligence and the Attorney General will coordinate all production, evaluation, and dissemination of finished intelligence.
3. During Phase Two, the period of an emerging civil disturbance, the Attorney General will be responsible for approving the prepositioning of Federal forces, designating a personal representative at the scene of a disorder, and making recommendations to you concerning the advisability of honoring a request for federal assistance.
4. During Phase Three, when a federal military force is committed to controlling a civil disturbance, the Secretary of Defense, utilizing the Department of the Army Executive Agent organization, will be responsible for restoring law and order wtihin the disturbance locale, subject to such general guidance as the Attorney General may provide.
5. During the Phase Four period of withdrawal of federal forces, the Attorney General will determine when local officials can assume responsibility with their local resources and federal forces can be withdrawn.

If you will approve this recommended clarification of responsibilities, we will personally assure that our two departments work closely together to provide an effective structure for discharging federal responsibility for civil disturbance control.

John N. Mitchell,
Attorney General.
Melvin R. Laird,
Secretary of Defense.

Tab C
March 25, 1969.

The Attorney General,
Deputy Attorney General,
William H. Rehnquist,
Assistant Attorney General,
Office of Legal Counsel.

DRAFT MEMORANDUM TO THE PRESIDENT ON CIVIL DISTURBANCE PLAN

As requested by Mr. Revercomb, annexed for your review is a draft of a memorandum to the President to be signed by the Secretary of Defense and the Attorney General, embodying the Civil Disturbance Plan to be implemented by the two Departments upon its approval by the President.

This has been formulated in conferences between members of my staff and the staff of the General Counsel of the Army. We are also sending copies to the latter, who will see to its review by the Secretary of the Army and the Secretary of Defense. As soon as we have your comments and those from the

Pentagon, we shall prepare a definitive revision for signature and transmission to the White House.

MEMORANDUM FOR THE PRESIDENT

Re Interdepartmental Action Plan for Civil Disturbances.

INTRODUCTION

This memorandum outlines a plan by which the Departments of Defense and Justice propose (1) to coordinate their preparations for and their responses to any serious civil disturbance that may hereafter occur in an American city, and (2) to assist the President in responding appropriately and effectively to any request he may receive for Federal military forces to aid in suppressing such a disturbance.

The Secretary of Defense and the Attorney General join in submitting this plan for your consideration and approval. If you approve it, our Departments will work out the details. We believe that the proposed plan merits your prompt attention because you may have to decide, on short notice, whether to honor a request for military aid to quell a civil disturbance.

A principal feature of the plan is the designation of the Attorney General as the chief civilian officer in charge of guiding and coordinating all Federal Government activities relating to civil disturbances. The Attorney General is the logical choice for this role in view of his responsibilities as chief law enforcement officer of the Federal Government, and as chief legal adviser to the President on the critically important decisions the President must personally make as to whether and when to commit military forces in response to a request.

On the other hand, all essentially military preparations and operations, including especially the engagement of military forces at the scene of a disturbance, will be the primary responsibility of the Secretary of Defense. In discharging these functions, he will observe such law enforcement policies as the Attorney General may determine. This will assure that military planning and operations are consistent with Administration policy and the requirements of law.

The responsibilities of the Department of Defense under this plan will be carried out principally through the Department of the Army, inasmuch as the Secretary of the Army is assigned primary responsibility for civil disturbance matters, as Executive Agent, subject to the general supervision of the Secretary of Defense. Within the Department of the Army, a Directorate for Civil Disurbance Planning and Operations serves the Secretary and the Army Chief of Staff as the principal military staff agency for such matters.

I. THE BASIC PLAN

The plan is divided chronologically into four phases:

1. The period of civil disturbance planning and intelligence operations prior to the outbreak of any actual disturbance.
2. The period from the initial outbreak of an actual disturbance to the time at which the President decides to employ Federal military force.
3. The period during which Federal military forces are sent into action and remain in action at the scene of the disorder.
4. The portion of the latter period during which the advisability of withdrawing the Federal forces is considered, decided, and acted upon.

The basic plan for each of these phases is as follows:

Phase One—Advance Planning and Intelligence Operations

As in the recent past, the Secretary of Defense will have the primary responsibility for training, equipping, and designating the forces to be used in controlling civil disturbances. He will also retain primary responsibility for preparing operation plans, determining procedures for alerting and moving the forces, and testing command and control arrangements. The Attorney General will be consulted on important questions of law and policy arising in connection with these plans and preparations.

The Attorney General will contact all the State Governors reminding them of the legal requirements for obtaining Federal military aid pursuant to section 331 of Title 10, United States Code: that a situation of serious domestic violence exists within the State; that such violence cannot be brought under control by the law enforcement resources available to the Governor, including local and State police forces and the National Guard; and that the Governor requests the President to employ the Armed Forces to bring the violence under control. The Governors will be advised to direct to the Attorney General all preliminary communications concerning the possible need for Federal military assistance under such circumstances.

The Attorney General will coordinate Federal law enforcement plans and the Secretary of Defense will coordinate Federal military plans with State and local authorities, in order to facilitate (1) fair and effective administration of justice under emergency conditions caused by civil disturbances; and (2) smooth working relationships between Federal and State forces in any disturbance area.

The Attorney General will be responsible for collecting, analyzing, evaluating, and disseminating intelligence bearing upon the probability of any serious disturbance. The Federal Bureau of Investigation will be charged with the task of collecting raw intelligence and transmitting it on a timely basis to the Department of Defense. At the request of the Attorney General, the Department of the Army, through the U.S. Army Intelligence Command, may assist in this effort. However, in order to preserve the salutary tradition of avoiding military intelligence activities in predominantly civilian matters, the U.S. Army Intelligence Command should not ordinarily be used to collect the intelligence of this sort.

The Deputy Attorney General has already designated an intelligence evaluation committee consisting of four representatives from Justice and one from Army.

Phase Two—Responding to Early Phases of a Civil Disturbance

During the early stages of a crisis in which it appears that a request for Federal military assistance may be forthcoming, the intelligence organization of the Department of Justice will alert the Attorney General and the Secretary of Defense. It is expected that responsible State and local officials will promptly inform the Attorney General of the situation and will thereafter keep him informed of developments. When advised that a serious disturbance is in the making, the Attorney General will immediately inform the President.

If time permits, the Attorney General and the Secretary of Defense may dispatch their personal representatives to the disturbance area to appraise the situation before any decision is made to commit Federal forces. Such action can help to assure that the Federal Government responds in accordance with the realities of the situation as perceived by its own observers.

Precautionary steps, such as alerting Federal armed forces and prepositioning them relatively near the disturbance area, can be taken by the Federal Government prior to receipt of a formal request from a Governor for Federal military assistance. The prepositioning of Federal armed forces by order of the Secretary of Defense will be undertaken only with the concurrence of the Attorney General and, ordinarily, only if a substantial likelihood appears that such forces will be required.

When the State Governor anticipates that a request for Federal military assistance will shortly become necessary, he will confer with the Attorney General concerning the facts of the situation, so that the Attorney General can review the legal sufficiency of the impending request. After consultaion with Department of Defense officials on the gravity of the situation, the Attorney General will advise the President whether the conditions would warrant honoring a request at that particular time.

When the Governor concludes that a formal request for military assistance is necessary, he will address it directly to the President. At such time, the President must exercise his personal judgment as to whether or not to commit Federal armed forces. The decision may be a difficult one, as it involves a weighing of the apparent need for federal forces in the circumstances and the President's responsibility to respond to State requests for such assistance against the primary responsibility of State and local authorities for maintaining local law and order, and the inadvisability of employing Federal military force for that purpose except in the last resort.

The Attorney General will have furnished the President with an appropriately drawn Proclamation and Executive Order, to be signed by the President in the event that he decides to honor the request. These documents (proposed forms attached)[1] will formalize the decision and state the factual and legal grounds on which it is based.

Phase Three—Engagement of Federal Troops

The Executive Order will authorize the Secretary of Defense to conduct the military operation, subject to such law enforcement policies as the Attorney General may determine. Consistently with such policies, and with established procedures within the Department of Defense, the Secretary of Defense will make the necessary military decisions and will issue the appropriate orders to the military commanders concerned. Thus the chain of military command running down from the Secretary of Defense will be preserved. The Executive Order further authorizes the Secretary of Defense to federalize National Guard units and, if required, to call units and members of other Reserve Components of the Armed Forces to active duty for purpose of the operation.

By the terms of the Order, the Attorney General will remain responsible (1) for coordinating the activities of all Federal agencies assisting in the suppression of violence and in the administration of justice in the affected area, and (2) for coordinating these activities with those of State and local agencies similarly engaged.

Phase Four—Withdrawal of Federal Troops

As the employment of Federal military forces succeeds in bringing the disturbance under control, the military commander and representatives of the Attorney General at the scene of the disturbance will make recommendations to their respective superiors concerning the timing for the withdrawal of Federal units, the defederalization of National Guard units, and the release from active duty of any Reserve units. It is expected that the Secretary of Defense will decide these matters in the light of the Attorney General's recommendations as to the ability of the civil authorities to resume full responsibility for the maintenance of law and order in the affected area.

II. THE BASIC PLAN FOR THE WASHINGTON METROPOLITAN AREA

The respective roles of the Secretary of Defense and the Attorney General in preparing for and responding to civil disturbances in the Washington metropolitan area are essentially the same as described above with respect to disturbances within a State. Thus the Attorney General will be responsible for coordinating Federal activities and determining Federal law enforcement policies relating to civil disturbances in this area, and the Secretary of Defense will be in charge of military operations to suppress such disturbances.

There are, however, several supplemental features and several variations that characterize the basic plan as applied to the Washington area. These are as follows:

1. The basic plan must include not only provisions for dealing with generalized disturbances, but also provisions for protecting government property, functions, or personnel in this area against any form of unlawful interference. Military operations to suppress such interference will be the responsibility of the Secretary of Defense, subject to the law enforcement policies of the Attorney General.

2. The President will ordinarily look to the Mayor of the District, as he does to the Governor of a State, to make a formal request for military assistance to control a local civil disturbance.

3. In addition to his general authority to employ Federal military forces as described above, the President, as Commander-in-Chief of the D.C. National Guard, is authorized to use that Guard in militia status to suppress a civil disturbance in the District. To facilitate the practical availability of this option, the outstanding Executive Order vesting administrative control over

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[1] The Proclamation is essentially a formality which fulfills the requirement of 10 U.S.C. 334. The attached Proclamation is based on the form developed by Attorney General Brownell in the Little Rock disturbance of 1957, and used since that time in a variety of civil disturbance situations. The attached form of Executive Order, however, embodies several improvements over those used in recent incidents, notably in that it spells out the respective responsibilities of the Attorney General and the Secretary of Defense in coping with a civil disturbance.

the D. C. Guard in the Secretary of Defense should be amended to establish the Secretary's authority to call out the Guard in militia status to control a local civil disturbance. An amended Executive Order will be prepared for the President's approval and signature. In a particular civil disturbance situation the Attorney General, after consulting with the Secretary of Defense, will advise the President as to the choices available to him with respect to utilization of the D.C. National Guard and active Armed Forces.

4. In addition to actual outbreaks of civil disorder, the D.C. plan must take account of the possibility that peaceful demonstrations in the District may develop into civil disorders. In order to minimize that risk, provision should be made for the policing of such demonstrations by National Guardsmen as well as District police forces. Moreover, the plan will provide for the limited use of active Armed Forces to protect Government property and functions against unlawful interference (as on the occasion of the demonstrations at the Pentagon in October of 1967).

If you approve the plan as outlined above, the Departments of Defense and Justice will take all necessary steps to implement it.

Secretary of Defense.

Attorney General.

LAW AND ORDER IN THE STATE OF ____________

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the Governor of the State of ____________ has informed me that conditions of domestic violence and disorder exist in and about the City of ____________ in that State, endangering life and property and obstructing execution of the laws, and that the law enforcement resources available to the City and State, including the National Guard, are unable to suppress such acts of violence and to restore law and order; and

WHEREAS the Governor has requested me to use such of the Armed Forces of the United States as may be necessary for those purposes; and

WHEREAS such domestic violence and disorder are also obstructing the execution of the laws of the United States, including the protection of Federal property and functions in and about the City of ____________.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, including Chapter 15 of Title 10 of the United States Code, do command all persons engaged in such acts of violence to cease and desist therefrom and to disperse and retire peaceably forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of ________, in the year of our Lord nineteen hundred and ____, and of the Independence of the United States of America the one hundred and ninety-____.

EXECUTIVE ORDER

PROVIDING FOR THE RESTORATION OF LAW AND ORDER IN THE STATE OF ____________

WHEREAS I have today issued Proclamation No. ____ pursuant in part to the provisions of Chapter 15 of Title 10 of the United States Code; and

WHEREAS the conditions of domestic violence and disorder described therein continue, and the persons engaging in such acts of violence have not dispersed;

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and Commander in Chief of the Armed Force by the Constitution and laws of the United States, including Chapter 15 of Title 10 of the United States Code, and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. Units and members of the Armed Forces of the United States will be used to suppress the violence described in the proclamation and to restore law and order in and about the City of ____________.

SECTION 2. The Secretary of Defense is authorized to use such of the Armed Forces as may be necessary to carry out the provisions of Section 1. To that end, he is authorized to call into the active military service of the United States units or members of the National Guard and other Reserve Components of the Armed Forces, as authorized by law, to serve in an active duty status for an indefinite period and until relieved by appropriate orders. Units or members may be relieved subject to recall at the discretion of the Secretry of Defense.

In carrying out the provisions of this order, the Secretary of Defense will observe such law enforcement policies as the Attorney General may determine.

SECTION 3. Until such time as the Armed Forces shall have withdrawn from the engagement authorized by this order, the Attorney General is further authorized (1) to coordinate the activities of all Federal agencies assisting in the suppression of violence and in the administration of justice in and about the City of ____________, and (2) to coordinate the activities of all such agencies with those of State and local agencies similarly engaged.

SECTION 4. The Secretary of Defense is authorized to determine when Federal military forces shall be withdrawn from the disturbance area and when federalized National Guard and other Reserve Component units and personnel shall be released from active Federal service. Such determinations shall be made in the light of the Attorney General's recommendations as to the ability of State and local authorities to resume full responsibility for the maintenance of law and order in the affected area.

SECTION 5. The Secretary of Defense and the Attorney General are authorized to delegate to subordinate officials of their respective Departments any of the authority conferred upon them by this order.

THE WHITE HOUSE,
________________, 19____

LAW AND ORDER IN THE WASHINGTON METROPOLITAN AREA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS I have been informed that conditions of domestic violence and disorder exist in the Washington metropolitan area, endangering life and property and obstructing execution of the laws, and that local police forces are unable to bring about the prompt cessation of such acts of violence and restoration of law and order; and

WHEREAS I have been requested to use such units of the National Guard and of the Armed Forces of the United States as may be necessary for those purposes; and

WHEREAS in such circumstances it is also my duty as Chief Executive to take care that the property, personnel and functions of the Federal Government, of embassies of foreign governments, and of international organizations in the Washington metropolitan area are protected against violence or other interference:

NOW, THEREFORE, I, RICHARD M. NIXON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do command all persons engaged in such acts of violence to cease and desist therefrom and to disperse and retire peaceably forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of ________, in the year of our Lord nineteen hundred and ____, and of the Independence of the United States of America the one hundred and ninety-____.

EXECUTIVE ORDER

PROVIDING FOR THE RESTORATION OF LAW AND ORDER IN THE WASHINGTON METROPOLITAN AREA

WHEREAS I have today issued Proclamation No. ____, pursuant in part to the provisions of Chapter 15 of Title 10 of the United States Code; and

WHEREAS the conditions of domestic violence and disorder described therein continue, and the persons engaging in such acts of violence have not dispersed;

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and Commander in Chief of the Armed Forces under the Constitution and laws of the United States, including Chapter 15 of Title 10 of the United States Code and Section 301 of Title 3 of the United States Code, and by virtue of the authority vested in me as Commander in Chief of the militia of the District of Columbia by the Act of March 1, 1889, as amended (D. C. Code, Title 39), it is hereby ordered as follows:

SECTION 1. Units and members of the Armed Forces of the United States or of the District of Columbia, or both, will be used to suppress the violence described in the proclamation and restore law and order in and about the Washington metropolitan area.

SECTION 2. (a) The Secretary of Defense is authorized to use such of the Armed Forces as may be necessary to carry out the provisions of Section 1, and to protect against unlawful interference the property, personnel and functions of the Federal and District Governments, of embassies of foreign governments, and of international organizations in the Washington metropolitan area. To these ends, he is authorized to call into the active military service of the United States units or members of the National Guard and other Reserve Components of the Armed Forces, as authorized by law, to serve in an active duty status for an indefinite period and until relieved by appropriate orders. Units or members may be relieved subject to recall at the discretion of the Secretary of Defense.

(b) In addition, in carrying out the provisions of this order, the Secretary of Defense is authorized to exercise any of the powers vested in me by law as Commander in Chief of the militia of the District of Columbia, during such times as units or members of the Army National Guard or Air National Guard of the District shall not have been called into the active military service of the United States.

(c) In carrying out the provisions of this order, the Secretary of Defense will observe such law enforcement policies as the Attorney General may determine.

SECTION 3. Until such time as military forces shall have withdrawn from the engagement authorized by this order, the Attorney General is further authorized (1) to coordinate the activities of all Federal Government agencies assisting in the suppression of violence and in the administration of justice in the Washington metropolitan area, and (2) to coordinate the activities of all such agencies with those of State and District of Columbia agencies similarly engaged.

SECTION 4. The Secretary of Defense is authorized to determine when Federal or District military forces shall be withdrawn from the disturbance area and when federalized National Guard and other Reserve Component units and personnel shall be released from active Federal service. Such determinations shall be made in the light of the Attorney General's recommendations as to the ability of civilian authorities to resume full responsibility for the maintenance of law and order in the affected area.

SECTION 5. The Secretary of Defense and the Attorney General are authorized to delegate to subordinate officials of their respective Departments any of the authority conferred upon them by this order.

THE WHITE HOUSE,
__________________, 196__.

TAB D

MEMORANDUM FOR THE SECRETARY OF THE ARMY AND THE UNDER SECRETARY OF THE ARMY

Attached is a draft of the memorandum which has been proposed as a means for the Secretary of Defense and The Attorney General to obtain the approval of the President on a division of responsibilities for civil disturbance matters. The memorandum was prepared jointly by my office and the office of Legal Counsel, Department of Justice. There were several drafts preceding this one, and the Department of Justice, without our concurrence, introduced some minor variations in the attached version with which I do not agree. I do agree, however, that the paper is one we could live with, and my objections go more to the adequacy of explanation offered to the President concerning his role than to the question of dividing responsibilities between the Secretary of Defense and The Attorney General.

There is apparently considerable pressure from The Attorney General to accelerate submission of the paper to the President. Accordingly, I propose to furnish copies to ASD(A), ASD(PA) and OSD General Counsel, since they are the three OSD representatives on the Civil Disturbance Steering Group. I am also furnishing copies to General Palmer and General Unger. I believe a copy should be furnished to Mr. Laird by Mr. Resor.

Within the Department of Justice, copies of the draft memorandum are being referred to The Attorney General and the Deputy Attorney General for their comments.

ROBERT E. JORDAN III,
General Counsel.

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25 MARCH 1969.

Note for Mr. Henkin, Acting Assistant Secretary of Defense (Public Affairs).
Subject: Interdepartmental Action Plan for Civil Disturbances.

Attached is a draft of the memorandum which has been proposed as a means for the Secretary of Defense and the Attorney General to obtain the approval of the President on a division of responsibilities for civil disturbance matters.

ROBERT E. JORDAN III,
General Counsel.

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25 MARCH 1969.

Note for Colonel Persons, OTJAG.
Subject: Interdepartmental Action Plan for Civil Disturbances.

Attached is a draft of the memorandum which has been proposed as a means for the Secretary of Defense and the Attorney General to obtain the approval of the President on a division of responsibilities for civil disturbance matters.

ROBERT E. JORDAN III,
General Counsel.

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25 MARCH 1969.

Note for Mr. L. Niederlehner, Acting General Counsel of Defense.
Subject: Interdepartmental Action Plan for Civil Disturbances.

Attached is a draft of the memorandum which has been proposed as a means for the Secretary of Defense and the Attorney General to obtain the approval of the President on a division of responsibilities for civil disturbance matters.

ROBERT E. JORDAN III,
General Counsel.

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25 MARCH 1969.

Note for the Director for Civil Disturbance, Planning and Operations.
Subject: Interdepartmental Action Plan for Civil Disturbances.

Attached is a draft of the memorandum which has been proposed as a means for the Secretary of Defense and the Attorney General to obtain the approval of the President on a division of responsibilities for civil disturbance matters. I have furnished a copy to General Palmer and discussed with him how we might have a close hold staffing on the paper.

ROBERT E. JORDAN III,
General Counsel.

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25 MARCH 1969.

Note for the Vice Chief of Staff.

BRUCE: Attached is a draft of the memorandum which we discussed. It has been proposed as a means for the Secretary of Defense and the Attorney General to obtain the approval of the President on a division of responsibilities for civil disturbance matters. A copy has been furnished to the Director For Civil Disturbance Planning and Operations.

ROBERT E. JORDAN III,
General Counsel.

TAB F

SIGNIFICANT SUGGESTED CHANGES

A. Page 1

This memorandum outlines a plan by which the Departments of Defense and Justice propose (1) to coordinate their preparations for and their responses to any serious civil disturbance that may hereafter occur ~~in an American city~~ *in a city in the United States*, and (2) to assist the President in responding appropriately and effectively to any request he may receive for Federal military forces to aid in suppressing such a disturbance. *While the plan is principally geared to situations involving a State request for assistance in controlling urban violence and disorder under Section 331 of Title 10, United States Code, the relationships it formalizes are equally applicable to other situations, such as the enforcement of Federal law under 10 U.S.C. 322 or the protection of civil rights pursuant to 10 U.S.C. 333, that may require the employment of Federal armed forces.*

(a) Page 2

. . . chief civilian officer in charge of ~~guiding~~ ~~and~~ coordinating all Federal Government activities . . .

B. Page 2

On the other hand, all essentially military preparations and operations, including especially the *employment* ~~engagement~~ of military forces at the scene of a disturbance, will be the primary responsibility of the Secretary of Defense. In discharging these functions, he will observe such law enforcement policies as the Attorney General may determine. *To the extent practical such law enforcement policies will be formulated during the planning stage so that military commanders can familiarize themselves with them and train their personnel to implement them.* This will assure that military planning and operations are consistent with Administration policy and the requirements of law.

C. Page 2

The responsibilities of the Department of Defense under this plan will be carried out principally through the Department of the Army, inasmuch as the Secretary of the Army is assigned primary responsibility for civil disturbance matters, as Executive Agent, subject to the general supervision of the Secretary of Defense. Within the Department of the Army, a Directorate for Civil Disturbance Planning and Operations serves the Secretary and the Army Chief of Staff as the principal military staff agency for such matters. *Once a decision has been made to commit Federal armed forces in a locality and announced by the White House, the Assistant Secretary of Defense (Public Affairs) will be responsible for all public affairs activities in connection with the employment of such Federal armed forces to control civil disturbances.*

(b) Page 3

"3. The period during which Federal military forces are *employed* ~~sent into action and remain in action~~ at the scene of the disorder."

(c) Page 4

". . . important questions of law and *law enforcement* policy arising . . ."

D. Page 4

The Attorney General will be responsible for Federal efforts directed toward improving and evaluating the capabilities of civilian local law enforcement authorities to deal with civil disturbances, and the Secretary of Defense will be responsible for the Federal efforts relating to the State National Guard. The Attorney General will coordinate Federal law enforcement plans and the Secretary of Defense will coordinate Federal military plans with State and local authorities, in order to facilitate (1) fair and effective administration of justice under emergency conditions caused by civil disturbances; and (2) smooth working relationships between Federal and State forces in any disturbance area.

(d) Page 5

" . . . the Department of the Army, ~~through the U.S. Army Intelligence Command~~, may assist . . . However . . . the ~~U.S.~~ Army ~~Intelligence Command should~~ *will* not ordinarily . . ."

E. Page 5

The Army has considerable experience in evaluating raw intelligence including that relating to Civil Disturbances, and it will continue to provide intelligence evaluations. To improve interdepartmental intelligence coordination and evaluation procedures, the [Deputy] Attorney General has ~~already~~ *recently* designated an intelligence evaluation committee consisting of [four] representatives from various units in Justice and [one] from the Army.

F. Page 6

Precautionary steps, such as alerting Federal armed forces and prepositioning them relatively near the disturbance area, can be taken by the Federal Government prior to receipt of a formal request from a Governor for Federal military assistance. *Prepositioning must be undertaken with discretion: In the absence of at least an informal State request for assistance or in the face of expressed opposition of a Governor to Federal assistance, prepositioning could be viewed as an unwarranted Federal interference with local responsibilities and States' rights.* The prepositioning of ~~Federal armed forces by~~ *more than a battalion sized unit (approximately 500 men) by* order of the Secretary of Defense will be undertaken only with the ~~concurrence~~ *informal approval* of the ~~Attorney General and,~~ *President. Such approval will be sought by the Attorney General, and* ordinarily only if *there appears to be a* substantial likelihood ~~appears~~ that such forces will be required. ~~*The President will be notified in advance by the Attorney General of any decision to preposition Federal armed forces in a State.*~~

G. Page 7

When the Governor concludes that a formal request for military assistance is necessary, he will address it directly to the President. At such time, the President must exercise his personal judgment as to whether or not to commit Federal armed forces. The decision may be difficult one, as it involves a weighing of the apparent need for *Federal* forces in the circumstances and the President's responsibility to respond to State requests for such assistance against the primary responsibility of State and local authorities for maintaining local law and order, and the inadvisability of employing Federal military force for that purpose except in the last resort. *On several past occasions, Presidents have declined the honor requests or delayed action on them until they were satisfied that conditions warranting the employment of Federal armed forces were met.*

H. Page 8

The Executive Order will authorize the Secretary of Defense to conduct the military operation, *subject to* ~~such law enforcement policies as the Attorney General may determine~~ *the law enforcement policies determined by the Attorney General during the planning phase.* ~~Consistently with~~ *Guided by* such policies, ~~and with~~ *pursuant to* established procedures within the Department of Defense, the Secretary of Defense ~~will make~~ *is responsible for* the necessary military decisions and ~~will issue~~ *for issuance of* the appropriate orders to the military commanders concerned. Thus the chain of military command running down from the Secretary of Defense will be preserved. *The established law enforcement policies may require revision or elaboration during actual military operations; in that event, the Secretary of Defense will refer such matters, military exigencies permitting, to the Attorney General, together with his recommendations.* The Executive Order further authorizes the Secretary of Defense to federalize National Guard units and, if required, to ~~all~~ *order* units ~~and members of other~~ of Reserve Components of the Armed Forces to active duty for purposes of the operation.

I. Page 11

3. In addition to his general authority to employ Federal military forces as described above, the President, as Commander-in-Chief of the D.C. National Guard, is authorized to use that Guard in militia status to suppress a civil disturbance in the District *without the necessity for a Proclamation or Executive Order.* To facilitate the practical availability of this option, the outstanding Executive Order vesting administrative control over the D.C. Guard in the Secretary of Defense should be amended to establish the Secretary's authority *in such cases* to call out the Guard in militia status to control a local civil disturbance. An amended Executive Order will be prepared for the President's approval and signature. *The D.C. National Guard [(may)] will be used in militia status for the purpose of suppressing a civil disturbance only after the informal approval of the President has been [(advised)] obtained.* In a particular civil disturbance situation,

the Attorney General, after consulting with the Secretary of Defense, will advise the President as to the choices available to him with respect to utilization of the D.C. National Guard and active armed forces.

(e) Page 12

". . . provision ~~should~~ *can* be made for the policing of such demonstrations by National Guardsmen (*in their militia status*) as well as District police forces. Moreover, ~~the plan will provide~~ *planning provides* . . . ."

(f) State Executive Order Page 1

D.C. Executive Order Page 2

". . . National Guard and ~~other~~ *to order units of* the Reserve Components . . . ."

(g) State Executive Order Page 2

D.C. Executive Order Page 3

". . . when federalized National Guard and ~~other~~ Reserve component units ~~and personnel~~ shall be released . . ."

(h) State Executive Order Page 2

D.C. Executive Order Page 2

". . . Secretary of Defense [will] *shall* observe such law enforcement . . ."

J. State Executive Order Page 3

D.C. Executive Order Page 3

SECTION 5. *The Secretary of Defense is authorized to delegate to the Deputy Secretary of Defense and one or more of the Secretaries of the Military Departments and the Attorney General is authorized to delegate to the Deputy Attorney General and to one or more of the Assistant Attorneys General, any of the authority conferred upon them respectively by this order.* ~~SECTION 5. The Secretary of Defense and the Attorney General are authorized to delegate to subordinate officials of their respective Departments any of the authority conferred upon them by this order.~~

TAB G

31 MARCH 1969.

MEMORANDUM FOR THE SECRETARY OF DEFENSE

Subject: Draft Civil Disturbance Memorandum for the President.

I previously furnished you with a copy of the initial "for comment" draft of a proposed joint memorandum to the President concerning civil disturbances. Subsequently, we have been obtaining the views of interested officials within the Army, and Bob Jordan solicited comments on the initial draft from the Acting General Counsel, DoD, the Acting Assistant Secretary of Defense (Public Affairs), and the Assistant Secretary of Defense (Administration). All the comments received were reflected in a single set of proposed revisions to the initial draft. At Tab A is a recapitulation of the revisions. The recapitulation shows the revisions in the context of the initial draft, with deleted portions marked out, and added portions underscored.

We have coordinated our suggested revisions with the Department of Justice, and with two exceptions, they have been accepted by the Office of Legal Counsel. Copies of our proposed revisions have been furnished to the Deputy Attorney General by the Office of Legal Counsel, with the indication that they concur, with two exceptions.

The two exceptions are indicated on the recapitulation by red signals. One deals with the public affairs responsibilities during civil disturbances, and the other deals with civil disturbance intelligence collection and analysis functions. The language on public affairs responsibilities has the approval of the Acting Assistant Secretary of Defense (Public Affairs). The language on intelligence represents the Army's view, in which OSD representatives have concurred, of the proper military intelligence role.

Mr. Beal plans to explore the two unresolved areas with the Deputy Attorney General in order to see if an accommodation can be reached. I will keep you advised. Subject to any reservations you may have about the draft memorandum, it appears that there should be at most one or two areas of disagreement to be resolved when you discuss the matter with the Attorney General.

A revised draft memorandum, with enclosures, reflecting all of our proposed changes, is attached at Tab B.

Stanley R. Resor,
Secretary of the Army.

Memorandum for the Secretary of Defense

Subject: Memorandum for the President on Civil Disturbance Responsibilities.

I have previously furnished you drafts of the proposed memorandum, to be signed by you and the Attorney General, for the purpose of securing the President's approval of a proposed statement of responsibilities for civil disturbance matters.

We have now received from the Department of Justice their proposed final version of this paper, a copy of which is attached. Their proposal generally reflects agreements and compromises reached between the Army and the Department of Justice, and I consider it an acceptable document for the purpose for which it is intended.

There are two matters of substance on which we have yielded to the strong views of the Attorney General. First of all, we have agreed to accept a quite general statement of intelligence responsibilities (red tab, attached paper) in lieu of language which we had recommended which would more clearly define the responsibility of the Federal Bureau of Investigation as the primary intelligence collection agency. We were not able to obtain full agreement with the Department of Justice on this point, but we have achieved an understanding that this question will be explored further in the near future between the two departments. I consider this arrangement acceptable.

The Justice Department has insisted on a statement of public affairs responsibility which clearly subordinates the role of the Assistant Secretary of Defense (Public Affairs) to that of the White House press office. In practice, we believe that press matters will be handled in the future as they have been handled in the past—that is, principally by ASD(PA) once the White House has announced a decision to commit federal troops. Since in practice all public affairs activities within the Executive Branch must accept guidance from the White House Press Secretary, I view the Department of Justice language as acceptable, although you may wish to consult Mr. Hankin on this point.

I recommend that you sign the attached memorandum to the President. The Attorney General has already done so. The Attorney General has expressed his strong wish to put this paper in the hands of the President for his trip to Abilene (beginning tomorrow) and thence to Key Biscayne for the weekend. I understand that he may call you directly on this point.

Stanley R. Resor,
Secretary of the Army.

Tab H

Office of the Attorney General,
Washington, D.C., April 1, 1969.

Memorandum

Hon. Robert Jordan,
General Counsel,
Department of the Army

After the Secretary of Defense has signed the attached, the copies for the White House should be delivered as soon as possible this evening to the Military Aide's Office at the White House with these instructions: Put on President's airplane for the attention of John Ehrlichman, Counsel to the President.

Richard G. Kleindienst,
Deputy Attorney General.

Enclosures.

Memorandum for the President

Re Interdepartmental Action Plan for Civil Disturbances.

INTRODUCTION

This memorandum outlines a plan by which the Departments of Defense and Justice propose (1) to coordinate their preparations for and their responses to any serious civil disturbance that may hereafter occur in a city in the United States, and (2) to assist the President in responding appropriately and effectively to any request he may receive for Federal military forces to aid in suppressing such a disturbance. While the plan is principally geared to situations involving a State request for assistance in controlling urban violence and disorder under section 331 of Title 10, United States Code, the relationships it formalizes are equally applicable to other situations, such as the enforcement of Federal law under 10 U.S.C. 332 or the protection of civil rights pursuant to 10 U.S.C. 333, that may require the employment of Federal armed forces.

The Secretary of Defense and the Attorney General join in submitting this plan for your consideration and approval. If you approve it, our Departments will work out the details. We believe that the proposed plan merits your prompt attention because you may have to decide, on short notice, whether to honor a request for military aid to quell a civil disturbance.

A principal feature of the plan is the designation of the Attorney General as the chief civilian officer in charge of coordinating all Federal Government activities relating to civil disturbances. The Attorney General is the logical choice for this role in view of his responsibilities as chief law enforcement officer of the Federal Government, and as chief legal adviser to the President on the critically important decisions the President must personally make as to whether and when to commit military forces in response to a request.

On the other hand, all essentially military preparations and operations, including especially the employment of military forces at the scene of a disturbance, will be the primary responsibility of the Secretary of Defense. In discharging these functions, he will observe such law enforcement policies as the Attorney General may determine. To the extent practical, such law enforcement policies will be formulated during the planning stage so that military commanders can familiarize themselves with them and train their personnel to implement them. This will assure that military planning and operations are consistent with Administration policy and the requirements of law.

The responsibilities of the Department of Defense under this plan will be carried out principally through the Department of the Army, inasmuch as the Secretary of the Army is assigned primary responsibility for civil disturbance matters, as Executive Agent, subject to the general supervision of the Secretary of Defense. Within the Department of the Army, a Directorate for Civil Disturbance Planning and Operations serves the Secretary and the Army Chief of Staff as the principal military staff agency for such matters.

Prior to the time a decision has been made to commit Federal armed forces in a locality the White House shall be responsible for all public information activities. Thereafter, the dissemination of all public information in connection with the control of civil disturbance shall be undertaken by or as directed by the White House.

I. THE BASIC PLAN

The plan is divided chronologically into four phases:

1. The period of civil disturbance planning and intelligence operations prior to the outbreak of any actual disturbance.
2. The period from the initial outbreak of an actual disturbance to the time at which the President decides to employ Federal military force.
3. The period during which Federal military forces are employed at the scene of the disorder.
4. The portion of the latter period during which the advisability of withdrawing the Federal forces is considered, decided, and acted upon.

The basic plan for each of these phases is as follows:

Phase One—Advance Planning and Intelligence Operations

As in the recent past, the Secretary of Defense will have the primary responsibility for training, equipping, and designating the forces to be used in controlling civil disturbances. He will also retain primary responsibility for preparing operation plans, determining procedures for alerting and moving the forces, and testing command and control arrangements. The Attorney General will be consulted on important questions of law and law enforcement policy arising in connection with these plans and preparations.

The Attorney General will contact all the State Governors, reminding them of the legal requirements for obtaining Federal military aid pursuant to section 331 of Title 10, United States Code: that situation of serious domestic violence exists within the State; that such violence cannot be brought under control by the law enforcement resources available to the Governor, including local and State police forces and the National Guard; and that the Governor requests the President to employ the Armed Forces to bring the violence under control. The Governors will be advised to direct to the Attorney General all preliminary communications concerning the possible need for Federal military assistance under such circumstances.

Under the supervision of the Attorney General, raw intelligence data pertaining to civil disturbances will be acquired from such sources of the Government as may be available. Such data will be transmitted to the Intelligence Unit of the Department of Justice, and it will be evaluated on a continuing basis by representatives from various departments of the Government. After evaluations have been made, the data will be disseminated to the Attorney General, the Secretary of Defense, and the White House.

Phase Two—Responding to Early Phases of a Civil Disturbance

During the early stages of a crisis in which it appears that a request for Federal military assistance may be forthcoming, the intelligence organization of the Department of Justice will alert the Attorney General and the Secretary of Defense. It is expected that responsible State and local officials will promptly inform the Attorney General of the situation and will thereafter keep him informed of developments. When advised that a serious disturbance is in the making, the Attorney General will immediately inform the President.

If time permits, the Attorney General and the Secretary of Defense may dispatch their personal representatives to the disturbance area to appraise the situation before any decision is made to commit Federal forces. Such action can help to assure that the Federal Government responds in accordance with the realities of the situation as perceived by its own observers.

Precautionary steps, such as alerting Federal armed forces and prepositioning them relatively near the disturbance area, can be taken by the Federal Government prior to receipt of a formal request from a Governor for Federal military assistance. Prepositioning must, of course, be undertaken with discretion. The prepositioning of more than a battalion-sized unit (approximately 500 men) by order of the Secretary of Defense will be undertaken only with the informal approval of the President. Such approval will be sought by the Attorney General, and, ordinarily, only if there appears to be a substantial likelihood that such forces will be required.

When the State Governor anticipates that a request for Federal military assistance will shortly become necessary, he will confer with the Attorney General concerning the facts of the situation, so that the Attorney General can review the legal sufficiency of the impending request. After consultation with Department of Defense officials on the gravity of the situation, the Attorney General will advise the President whether the conditions would warrant honoring a request at that particular time.

When the Governor concludes that a formal request for military assistance is necessary, he will address it directly to the President. At such time, the President must exercise his personal judgment as to whether or not to commit Federal armed forces. The decision may be a difficult one, as it involves a weighing of the apparent need for Federal forces in the circumstances, and the President's responsibility to respond to State requests for such assistance, against the primary responsibility of State and local authorities for maintaining local law and order, and the inadvisability of employing Federal military force for that purpose except in the last resort.

The Attorney General will have furnished the President with an appropriately drawn Proclamation and Executive Order, to be signed by the President in the event that he decides to honor the request. These documents will formalize the decision and state the factual and legal grounds on which it is based.*

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* Attached are proposed forms of Proclamation and Executive Order, one set for use in response to a State request, the other for use in connection with a civil disturbance in the Washington metropolitan area.

The Proclamation is essentially a formality which fulfills the requirement of 10 U.S.C. 334. The attached Proclamations are based on the form developed by Attorney General Brownell in the Little Rock disturbance of 1957, and used since that time in a variety of civil disturbance situations. The attached forms of Executive Order, however, embody several improvements over those used in recent incidents, notably in spelling out the respective responsibilities of the Attorney General and the Secretary of Defense in coping with a civil disturbance.

Phase Three—Engagement of Federal Troops

The Executive Order will authorize the Secretary of Defense to conduct the military operation, subject to the law enforcement policies determined by the Attorney General during the planning phase. Guided by such policies, pursuant to established procedures within the Department of Defense the Secretary of Defense is responsible for the necessary military decisions and for issuance of the appropriate orders to the military commanders concerned. Thus the chain of military command running down from the Secretary of Defense will be preserved. The established law enforcement policies may require revision or elaboration during the actual military operations; in that event, the Secretary of Defense will refer such matters, military exigencies permitting, to the Attorney General, together with his recommendations. The Executive Order further authorizes the Secretary of Defense to federalize National Guard units and, if required, to order units of Reserve Components of the Armed Forces to active duty for purposes of the operation.

The Attorney General will have a personal representative located with the military task force commander in each city where armed forces are committed. Standing military instructions to Task Force Commanders will instruct the commanders to consult with the Attorney General's representative on all significant matters.

By the terms of the Order, the Attorney General will remain responsible (1) for coordinating the activities of all Federal agencies assisting in the suppression of violence and in the administration of justice in the affected area, and (2) for coordinating these activities with those of State and local agencies similarly engaged.

Phase Four—Withdrawal of Federal Troops

As the employment of Federal military forces succeeds in bringing the disturbance under control, the military commander and the representative of the Attorney General at the scene of the disturbance will make recommendations to their respective superiors concerning the timing for the withdrawal of Federal units, the defederalization of National Guard units, and the release from active duty of any Reserve units. It is expected that the Secretary of Defense will decide these matters in the light of the Attorney General's recommendations as to the ability of the civil authorities to resume full responsibility for the maintenance of law and order in the affected area.

II. THE BASIC PLAN FOR THE WASHINGTON METROPOLITAN AREA

The respective roles of the Secretary of Defense and the Attorney General in preparing for and responding to a civil disturbance in the Washington metropolitan area are essentially the same as described above with respect to disturbances within a State. Thus the Attorney General will be responsible for coordinating Federal activities and determining Federal law enforcement policies relating to civil disturbances in this area, and the Secretary of Defense will be in charge of military operations to suppress such a disturbance.

There are, however, several supplemental features and variations that characterize the basic plan as applied to the Washington area. These are as follows:

1. The basic plan must include not only provisions for dealing with generalized disturbances, but also provisions for protecting government property, functions, or personnel in this area against any form of unlawful interference. Military operations to suppress such interference will be the responsibility of the Secretary of Defense, subject to the law enforcement policies of the Attorney General.

2. The President will ordinarily look to the Mayor of the District, as he does to the Governor of a State, to make a formal request for military assistance to control a local civil disturbance.

3. In addition to his general authority to employ Federal military forces as described above, the President, as Commander-in-Chief of the D.C. National Guard, is authorized to use that Guard in militia status to suppress a civil disturbance in the District without the necessity for a Proclamation or Executive Order.

To facilitate the practical availability of this option, the outstanding Executive Order of 1949 vesting administrative control over the D.C. Guard in the Secretary of Defense (E. O. 10030) should be amended to establish the Secretary's authority in such cases to call out the Guard in militia status to control a local civil disturbance. An amended Executive Order will be prepared for the President's approval and signature.

The D.C. National Guard will be used in militia status for the purpose of suppressing a civil disturbance only after the informal approval of the President has been obtained. In a particular civil disturbance situation, the Attorney General, after consulting with the Secretary of Defense, will advise the President as to the choices available to him with respect to utilization of the D.C. National Guard and active armed forces.

4. In addition to actual outbreaks of civil disorder, the D.C. planning takes account of the possibility that peaceful demonstrations in the District may develop into civil disturbances. In order to minimize that risk, provision can be made for the policing of such demonstrations by National Guardsmen in their militia status as well as by District police forces. Moreover, planning provides for the limited use of active armed forces to protect Government property and functions against unlawful interference (as on the occasion of the demonstration at the Pentagon in October of 1967).

If you approve the plan as outlined above, the Departments of Defense and Justice will take all necessary steps to implement it.

John N. Mitchell,
Attorney General.

LAW AND ORDER IN THE STATE OF ________________

By the President of the United States of America

A PROCLAMATION

WHEREAS the Governor of the State of ________ has informed me that conditions of domestic violence and disorder exist in and about the City of ________ in that State, endangering life and property and obstructing execution of the laws, and that the law enforcement resources available to the City and State, including the National Guard, are unable to suppress such acts of violence and to restore law and order; and

WHEREAS the Governor has requested me to use such of the Armed Forces of the United States as may be necessary for those purposes; and

WHEREAS such domestic violence and disorder are also obstructing the execution of the laws of the United States, and endangering the security of Federal property and functions, in and about the City of ________:'

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, including Chapter 15 of Title 10 of the United States Code, do command all persons engaged in such acts of violence to cease and desist therefrom and to disperse and retire peaceably forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of ________, in the year of our Lord nineteen hundred and ____, and of the Independence of the United States of America the one hundred and ninety-____.

LAW AND ORDER IN THE WASHINGTON METROPOLITAN AREA

By the President of the United States of America

A PROCLAMATION

WHEREAS I have been informed that conditions of domestic violence and disorder exist in the Washington metropolitan area, endangering life and property and obstructing execution of the laws, and that local police forces are unable to bring about the prompt cessation of such acts of violence and restoration of law and order; and

WHEREAS I have been requested to use such units of the National Guard and of the Armed Forces of the United States as may be necessary for those purposes; and

WHEREAS in such circumstances it is also my duty as Chief Executive to take care that the property, personnel and functions of the Federal Government, of embassies of foreign governments, and of international organizations in the Washington metropolitan area are protected against violence or other interference:

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do command all persons engaged in such acts of violence to cease and desist therefrom and to disperse and retire peaceably forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of ________, in the year of our Lord nineteen hundred and ____, and of the Independence of the United States of America the one hundred and ninety-____.

EXECUTIVE ORDER

PROVIDING FOR THE RESTORATION OF LAW AND ORDER IN THE STATE OF ____________

WHEREAS I have today issued Proclamation No. ____ pursuant in part to the provisions of Chapter 15 of Title 10 of the United States Code; and

WHEREAS the conditions of domestic violence and disorder described therein continue, and the persons engaging in such acts of violence have not dispersed;

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and Commander in Chief of the Armed Forces by the Constitution and laws of the United States, including Chapter 15 of Title 10 of the United States Code, and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. Units and members of the Armed Forces of the United States will be used to suppress the violence described in the proclamation and to restore law and order in and about the City of ________.

SEC. 2. The Secretary of Defense is authorized to use such of the Armed Forces as may be necessary to carry out the provisions of Section 1. To that end, he is authorized to call into the active military service of the United States units or members of the National Guard, and to order to active duty units of the Reserve Components of the Armed Forces, as authorized by law, to serve in an active duty status for an indefinite period and until relieved by appropriate orders. Units or members may be relieved subject to recall at the discretion of the Secretary of Defense.

In carrying out the provisions of this order, the Secretary of Defense shall observe such law enforcement policies as the Attorney General may determine.

SEC. 3. Until such time as the Armed Forces shall have been withdrawn pursuant to Section 4 of this order, the Attorney General is further authorized (1) to coordinate the activities of all Federal agencies assisting in the suppression of violence and in the administration of justice in and about the City of ________, and (2) to coordinate the activities of all such agencies with those of State and local agencies similarly engaged.

SEC. 4. The Secretary of Defense is authorized to determine when Federal military forces shall be withdrawn from the disturbance area and when federalized National Guard and Reserve Component units and personnel shall be released from active Federal service. Such determinations shall be made in the light of the Attorney General's recommendations as to the ability of State and local authorities to resume full responsibility for the maintenance of law and order in the affected area.

SEC. 5. The Secretary of Defense and the Attorney General are authorized to delegate to subordinate officials of their respective Departments any of the authority conferred upon them by this order.

THE WHITE HOUSE,
_______________, 19__

EXECUTIVE ORDER

PROVIDING FOR THE RESTORATION OF LAW AND ORDER IN THE WASHINGTON METROPOLITAN AREA

WHEREAS I have today issued Proclamation No. ______, pursuant in part to the provisions of Chapter 15 of Title 10 of the United States Code; and

WHEREAS the conditions of domestic violence and disorder described therein continue, and the persons engaging in such acts of violence have not dispersed;

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and Commander in Chief of the Armed Forces under the Constitution and laws of the United States, including Chapter 15 of Title 10 of the United States Code and Section 301 of Title 3 of the United States Code, and by virtue of the authority vested in me as Commander in Chief of the militia of the District of Columbia by the Act of March 1, 1889, as amended (D. C. Code, Title 39), it is hereby ordered as follows:

SECTION 1. Units and members of the Armed Forces of the United States or of the National Guard of the District of Columbia, or both, will be used to suppress the violence described in the proclamation and to restore law and order in and about the Washington metropolitan area.

SECTION 2. (a) The Secretary of Defense is authorized to use such of the Armed Forces as may be necessary to carry out the provisions of Section 1 and to protect against unlawful interference the property, personnel and functions of the Federal and District Governments, of embassies of foreign governments, and of international organizations in the Washington metropolitan area. To these ends, he is authorized to call into the active military service of the United States units or members of the National Guard, and to order to active duty units of the Reserve Components of the Armed Forces, as authorized by law, to serve in an active duty status for an indefinite period and until relieved by appropriate orders. Units or members may be relieved subject to recall at the discretion of the Secretary of Defense.

(b) In addition, in carrying out the provisions of this order, the Secretary of Defense is authorized to exercise any of the powers vested in me by law as Commander in Chief of the militia of the District of Columbia, during such time as units or members of the Army National Guard or Air National Guard of the District shall not have been called into the active military service of the United States.

(c) In carrying out the provisions of this order, the Secretary of Defense shall observe such law enforcement policies as the Attorney General may determine.

SECTION 3. Until such times as military forces shall have been withdrawn pursuant to Section 4 of this order, the Attorney General is further authorized (1) to coordinate the activities of all Federal Government agencies assisting in the suppression of violence and in the administration of justice in the Washington metropolitan area, and (2) to coordinate the activities of all such agencies with those of State and District of Columbia agencies similarly engaged.

SECTION 4. The Secretary of Defense is authorized to determine when Federal or District military forces shall be withdrawn from the disturbance area and when federalized National Guard and other Reserve Component units and personnel shall be released from active Federal service. Such determinations shall be made in the light of the Attorney General's recommendations as to the ability of civilian authorities to resume full responsibility for the maintenance of law and order in the affected area.

SECTION 5. The Secretary of Defense and the Attorney General are authorized to delegate to subordinate officials of their respective Departments any of the authority conferred upon them by this order.

THE WHITE HOUSE,

-------------------------------, 196--

TAB I

THE WHITE HOUSE
WASHINGTON

May 19, 1969

MEMORANDUM FOR THE PRESIDENT

SUBJECT FEDERAL RESPONSE TO CIVIL DISTURBANCES

The attached memorandum at Tab A formalizes operational plans for Federal response to potential civil disorders. With your approval, the Attorney General is designated chief civilian officer for coordination of all Federal government activities relating to civil disturbances. The Secretary of Defense, through the Department of the Army, will be primarily responsible for employment of the military at a disturbance site subject to law enforcement policies established by the Attorney General.

These operational plans specify Justice and Defense responsibilities for four distinct phases: (1) Advance Planning and Intelligence Operations; (2) Responding to Early Phases of a Civil Disturbance; (3) Engagement of Federal Troops; and (4) Withdrawal of Federal Troops. The plans present a prepared Federal response to disorders which is flexible enough to be varied as conditions change.

Also attached at Tab B are copies of proclamations and executive orders which by law you must sign in order to activate Federal forces to suppress violence. When a Governor concludes that a formal request for military assistance is necessary, he will address his request directly to you. Prior to your receiving such a request, the Attorney General will have reviewed the facts of the situation, consulted with Defense officials on the gravity of the disorder, and then advised you on whether the conditions would warrant honoring a request at that particular time. The appropriate proclamation and executive order will be designated for your signature.

Recommendation: That you approve the plan as outlined.

JOHN D. EHRLICHMAN

Approve ______

Disapprove ______

Good planning

TAB J

MAY 24, 1969.

MEMORANDUM FOR THE UNDER SECRETARY

Subject: Interdepartmental Action Plan for Civil Disturbances.

When the Justice Department retyped the Interdepartmental Action Plan in final form, it omitted a paragraph concerning the responsibility for improving the capability of civilian law enforcement and the State National Guard. We noticed this omission, and called it to the attention of Marty Richman (Deputy Assistant Attorney General, Office of Legal Counsel), who checked and determined that the omission was purely inadvertent. Now that the Plan has been formally approved by the President, I believe it would be appropriate to call the omission to the attention of Mr. Kleindienst, and suggest that we consider the paragraph as included in the plan, insofar as division of responsibility between Justice and Army is concerned. A letter to this effect, which I recommend that you sign, is attached.

ROBERT E. JORDAN III,
General Counsel.

JUNE 2, 1969.

Hon. RICHARD G. KLEINDIENST,
Deputy Attorney General,
Department of Justice,
Washington, D.C.

DEAR DICK: A recent review of the Memorandum for the President, subject: Interdepartmental Action Plan for Civil Disturbances, April 1, 1969, disclosed that a paragraph was omitted on page 6 of the memorandum signed by the Attorney General and the Secretary of Defense. It is our understanding that the paragraph was inadvertently omitted when the document was being prepared in final form. The paragraph reads as follows:

"The Attorney General will be responsible for Federal efforts directed toward improving and evaluating the capabilities of civilian local law enforcement authorities to deal with civil disturbances, and the Secretary of Defense will be responsible for improving and evaluating the capabilities of the National Guard. The Attorney General will coordinate Federal law enforcement plans and the Secretary of Defense will coordinate Federal military plans with State and local authorities, in order to facilitate (1) fair and effective administration of justice under emergency conditions caused by civil disturbances; and (2) smooth working relationships between Federal and State forces in any disturbance area."

Since the paragraph received the endorsement of all concerned and represents an agreed statement of civil disturbance responsibilities, I believe we should treat it as if it had been incorporated in the document sent to the President. We are annotating our copies of the agreement to make the paragraph a part of the policies guiding our civil disturbance planning.

Best regards,

THADDEUS R. BEAL,
Under Secretary of the Army.

JUNE 16, 1969.

MEMORANDUM FOR THE SECRETARY OF THE GENERAL STAFF

Subject: Interdepartmental Action Plan for Civil Disturbances.

On 2 June 1969 the Under Secretary wrote to the Deputy Attorney General informing him that a paragraph was inadvertently omitted on page 6 of the Interdepartmental Action Plan for Civil Disturbances when it was being prepared in final. He indicated that the Department of Defense copies of the agreement were being annotated to make the paragraph a part of the policies guiding our civil disturbance planning.

On 6 June 1969 the Deputy Attorney General responded to the Under Secretary concurring in his recommendation that the paragraph be treated as if it had been incorporated in the document sent to the President.

Request that the paragraph indicated below be incorporated by annotation into all copies of the Interdepartmental Action Plan for Civil Disturbances on page 6 immediately preceding the paragraph concerning intelligence. The paragraph is as follows:

"The Attorney General will be responsible for Federal efforts directed toward improving and evaluating the capabilities of civilian local law enforcement authorities to deal with civil disturbances, and the Secretary of Defense will be responsible for improving and evaluating the capabilities of the National Guard. The Attorney General will coordinate Federal law enforcement plans and the Secretary of Defense will coordinate Federal military plans with State and local authorities, in order to facilitate (1) fair and effective administration of justice under emergency conditions caused by civil disturbances; and (2) smooth working relationships between Federal and State forces in any disturbance area."

A copy of the correspondence is attached.

While the plan is unclassified, it should be marked "For Official Use Only."

JOSEPH R. ULATOSKI,
Colonel, CS,
Military Assistant to the
Under Secretary of the Army.

TAB K

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., August 8, 1969.

Hon. MELVIN LAIRD,
Secretary of Defense,
Washington, D.C.

DEAR MR. SECRETARY: It has been called to my attention that the interdepartmental memo to the President concerning an action plan for civil disturbances, dated April 1, 1969, is somewhat ambiguous in assigning responsibility for release of public information at the federal field headquarters. I am enclosing a draft paragraph which I hope will clarify this matter. Basically, the draft provides that absent any specific directions from the White House, the Senior Civilian Representative, as the Attorney General's ranking task force member on the scene, shall have the final responsibility for release of public information in the field, but shall be required to consult with the senior Military Commander on all releases dealing with military matters.

Would you please consider this proposed clarification and advise me of your views?

Sincerely,

JOHN N. MITCHELL,
Attorney General.

Unless otherwise directed by the White House press office, in situations where a disturbance team has been dispatched by the Attorney General, the Senior Civilian Representative shall have final responsibility for public information policies. With respect to all military matters he shall consult with the senior Military Commander on the scene in carrying out this responsibility.

AUGUST 11, 1969

MEMORANDUM FOR THE SECRETARY OF THE GENERAL STAFF

Subject: Department of Justice Civil Disturbance Relationships.

Attached is a letter from the Attorney General to the Secretary of Defense, intended to clarify the public affairs relationships set forth in the Interdepartmental Action Plan.

I have been assigned action on this matter and request any suggestions the Staff might have concerning the response to the Attorney General. In view of the OSA suspense of 14 August 1969, Staff comments are requested by COB 13 August. An advance copy of the letter has been provided to DCDPO.

ROBERT E. JORDAN III,
General Counsel.

August 13, 1969.

Memorandum thru: Vice Chief of Staff, U.S. Army.
For: The General Counsel.
Subject: Civil Disturbance Public Affairs Policy.

1. The purpose of this memorandum is to provide staff comments concerning the general public information policy proposed by the Attorney General (Inclosure 1). The DA should interpose no objection to the concept outlined in the Attorney General's letter of 8 August 1969.

2. However, it is considered that the proposed substitute wording at Inclosure 2 should be adopted in lieu of the DOJ proposed modification. The advantage of the wording at Inclosure 2 is that the uncertainty of whether the White House to DOJ or DOD is eliminated. This simplifies planning and the delegation of this function to DOJ is in consonance with the policy stated on page 11 of the Interdepartmental Plan that "the Attorney General will be responsible for coordinating the activities of all Federal agencies in the suppression of violence and the administration of justice in the affected area." The SCRAG, to be most effective, should always control the release of public information in the disturbance area.

3. In order that the internal working elements of this policy are understood by all agencies concerned, it is recommended that a conference be held between a White House Press representative, a senior representative of the Assistant Secretary of Defense (Public Affairs), the Director of Public Information, Department of Justice, and the DCDPO Information Officer. The purpose of this conference should be to:

a. Develop an agreement regarding the working relationship between DOJ and DOD public information personnel.

b. Determine if a representative of the Assistant Secretary of Defense (Public Affairs) will be the senior public information advisor to both the SCRAG and the Task Force Commander.

c. Determine equipment and space requirements to support public information activities in the disturbance area.

d. Delineate the channels of flow of information from military task force elements to final release.

4. Regarding paragraph 3b above, the views of the Directorate are as follows:

a. A representative of ASD(PA) would be preferred to an information advisor from DOJ since the DOD man would better understand the organization and functions of the military.

b. If DOJ insists that their SCRAG use his own Public Information Officer as his principal advisor, the portions of existing plans which direct that an ASD(PA) representative be the Public Affairs Chief for DOD elements at a disturbance area should be revoked. His insertion between the Task Force Commander/Information Officer and the SCRAG/DOJ-IO only adds an unnecessary layer which would further delay news release procedures. This is in contravention to the stated DOD policy of "maximum disclosure with minimum delay" as emphasized in the DOD Civil Disturbance Public Affairs Plan. This is also the publicly announced policy of the Administration.

c. The DA Civil Disturbance Plan requires that CONARC designate a senior Information Officer and staff to each Task Force Commander to act as his Information Officer during civil disturbance operations. It is considered that this officer will be well versed in information release policy and should be fully capable of representing the Department of Defense in information activities.

5. Army CINFO concurs in these comments.

W. J. McCaffrey,
Lieutenant General, GS,
Director for Civil Disturbance
Planning and Operations.

August 21, 1969.

Memorandum for the Acting Secretary of the Army

Subject: Civil Disturbance Public Affairs Responsibilities.

Attached for your signature is a memorandum to the Secretary of Defense forwarding a letter for his signature concerning public affairs responsibilities at the scene of a civil disturbance. As you will remember, when we were working on the April Interdepartmental Action Plan, the final public affairs responsibility was left unsettled. The suggestion by the Attorney General attempts to clarify his responsibility by making the Senior Civilian Representative the final public affairs arbiter at the scene of a disturbance. However, designation of the Senior Civilian Representative is not controversial. The controversy concerns the designation of the public affairs chief under the Senior Civilian Representative. Should it be DoJ or ASD(PA)?

The Department of Justice planners and potential Senior Civilian Representatives do not have a good feel for who should be running public affairs for the Federal effort at the scene of a disturbance. Dan Henkin has indicated informally that he believes the paragraph suggested for inclusion in the plan will be treated as a signal to Department of Justice public affairs personalities that they will supply the public affairs chief. He feels, however, that they cannot meet this responsibility within their available resources and that in time of crisis the White House will turn to DoD. He has also indicated his reluctance to have his public affairs people serve under Department of Justice public affairs representatives.

The only way to even begin to clear the air is to have the public affairs personalities from the White House, Department of Justice, Department of Defense and Department of the Army sit down together and attempt to reach some consensus on their mode of operation. Consequently, the most important part of the letter to the Attorney General is the suggestion that the public affairs personalities meet to settle their relationships at the scene of a disturbance.

I recommend you sign the memorandum to the Secretary of Defense.

ROBERT E. JORDAN III,
General Counsel.

AUGUST 23, 1969.

MEMORANDUM FOR THE SECRETARY OF DEFENSE

Subject: Civil Disturbance Public Affairs Responsibilities.

Attached for your signature is a letter to the Attorney General replying to his letter of 8 August 1969 concerning civil disturbance public affairs responsibilities.

The Department of Defense response concurs in the designation of the Senior Civilian Representative of the Attorney General as the final authority on public affairs matters at the scene of the disturbance. The response, however, modifies the Attorney General's suggestion by explicitly recognizing the role of the ASD(PA) representative and by omitting the specific reference to the possibility of a White House decision on public affairs responsibilities. Our intention is to avoid a formula that makes it appear than an *ad hoc* White House decision is likely in each civil disturbance instance. Of course, the White House could change the public affairs responsibility at any time.

The proposed response has been coordinated with Mr. Henkin and he concurs.

THADDEUS R. BEAL,
Under Secretary of the Army.

AUGUST 23, 1969.

MEMORANDUM FOR THE SECRETARY OF DEFENSE

Subject: Civil Disturbance Public Affairs Responsibilities.

Attached for your signature is a letter to the Attorney General replying to his letter of 8 August 1969 concerning civil disturbance public affairs responsibilities.

The Department of Defense response concurs in the designation of the Senior Civilian Representative of the Attorney General as the final authority on public affairs matters at the scene of the disturbance. The response, however, modifies the Attorney General's suggestion by explicitly recognizing the role of the ASD(PA) representative and by omitting the specific reference to the possibility of a White House decision on public affairs responsibilities. Our intention is to avoid a formula that makes it appear that an *ad hoc* White House decision is likely in each civil disturbance instance. Of course, the White House could change the public affairs responsibility at any time.

The proposed response has been coordinated with Mr. Henkin and he concurs.

THADDEUS R. BEAL,
Under Secretary of the Army.

As you know, the assignment of the final public affairs responsibility to the Senior Civilian Representative of the Attorney General is consistent with our past practice, planning, and current expectations.

Your 22 July 1969 Department of Justice Civil Disturbance Plan indicates that the Senior Civilian Representative will have available to him a Department of Justice public information officer. As noted above, under Department of Defense plans, a senior representative of the Assistant Secretary of Defense (Public Affairs) who is knowledgeable about Department of Defense military civil disturbance plans and policies will be with the Task Force Commander to provide him public affairs guidance. The Task Force Commander will also have on his personal staff an Army public information officer.

I believe it would be useful for representatives of your Department, the White House, and the Department of Defense concerned with civil disturbance public affairs matters to meet for the purpose of developing plans for the implementation of the Senior Civilian Representative's responsibilities. One of the issues that should be considered in planning is the relationship at the Task Force level between the Department of Defense and the Department of Justice public affairs representatives. I recognize that while our public affairs representatives can make tentative arrangements, a Senior Civilian Representative in the disturbance area may wish to vary these arrangements to suit his particular needs.

If you agree with the approach suggested, your representative can contact Mr. Jerry Friedheim, Deputy Assistant Secretary of Defense (Public Affairs), code 11—extension 70713, to make arrangements for the interdepartmental meetings. Mr. Friedheim will arrange for Department of Defense and Army representation.

Sincerely,

DAVID PACKARD,
Deputy.

THE SECRETARY OF DEFENSE,
Washington, D.C., August 25, 1969.

Hon. JOHN N. MITCHELL,
The Attorney General,
Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: I have reviewed the draft paragraph for inclusion in the 1 April Interdepartmental Action Plan for Civil Disturbances and I agree with the assignment of responsibility stated therein. I suggest the following revision of the draft paragraph to be substituted for the first paragraph on page 4 of the plan:

"Prior to the time a decision has been made to commit Federal armed forces in a locality the White House shall be responsible for all public information activities. Thereafter, the Senior Civilian Representative of the Attorney General shall have final responsibility for public information policies in the disturbance area. With respect to all military matters he shall consult with the Senior Military Commander and the Senior Representative of the Assistant Secretary of Defense (Public Affairs) on the scene in carrying out this responsibility."

The revision explicitly recognizes the responsibilities of the Assistant Secretary of Defense for providing civil disturbance public affairs guidance pursuant to Department of Defense Directive. We believe a Senior Civilian Representative would, even absent this explicit statement, find it helpful to consult with the Assistant Secretary's Representative.

Further, we would prefer to have the responsibility for public affairs settled in advance of a disturbance and the suggested change will indicate that, as between our respective Departments, we believe this matter is settled. Naturally, the White House could revise this arrangement in the light of circumstances affecting a particular disturbance.

September 18, 1969.

Memorandum for the Under Secretary of the Army

Subject: Reply to Mr. Kleindienst Concerning Modification of Interdepartmental Action Plan for Civil Disturbances.

Attorney General Mitchell wrote to the Secretary of Defense on August 8, 1969 suggesting a modification in the Interdepartmental Action Plan designed to clarify public affairs responsibilities in the event of an actual disturbance. (Tab A) we agreed generally with his suggestion, but had some minor word changes to suggest. You forwarded a recommended reply to the Secretary of Defense, which was signed on August 25, 1969 by Mr. Packard. (Tab B)

The Deputy Attorney General has now written to Mr. Packard suggesting that no modification be made in the plan. (Tab C) For some reason, which I cannot fathom, his letter makes it sound as if the Department of Defense initiated the suggestion for change.

In any event, the Attorney General prefers no change, the matter is not worth fussing over, and anything we come up with is likely to be changed in particular circumstances anyway. Accordingly, I recommend that we agree to the Department of Justice position and have attached (Tab D) a reply for your signature to Mr. Kleindienst. so indicated.

OSD sent the action to the Army for "appropriate action" so there is no need to have the Secretary or Deputy Secretary of Defense sign the response.

Robert E. Jordan III,
General Counsel.

Deputy Attorney General,
Washington, D.C., September 11, 1969.

Hon. David Packard,
Under Secretary of Defense,
Washington, D.C.

Dear Dave: The Attorney General has asked me to respond to your letter to him dated August 25 in which you set forth a suggested revision of the first paragraph on page 4 of the April 1 Interdepartmental Action Plan for Civil Disturbances.

The Attorney General is of the opinion that the April 1 plan should remain as it is written and I concur in this view. However, it seems to us that the language contained in your letter would certainly be a method of approach which the White House could designate in a particular situation and if the circumstances justified. Indeed it is our feeling that in the usual case that would arise, the language set forth in your letter would seem to be a satisfactory procedure to follow.

If you wish, please do not hesitate to call me so that we might discuss the matter further.

Very truly yours,

Richard G. Kleindienst,
Deputy Attorney General.

September 23, 1969.

Hon. Richard G. Kleindienst,
Deputy Attorney General,
Washington, D.C.

Dear Dick: Dave Packard asked me to reply to your letter of September 11, 1969. which discussed further the proposal which The Attorney General made in his letter of August 8, 1969 to Secretary Laird.

We have no objection to leaving the April 1 Plan in its original form. I am sure that should a problem concerning public affairs responsibilities arise in the future, we will be able to resolve it promptly on an ad hoc basis through discussions between representatives of our two Departments.

Sincerely,

Thaddeus R. Beal,
Under Secretary of the Army.

Tab L
March 29, 1969.

Note for Mr. Kleindienst

Following our discusion late yesterday with the Office of Legal Counsel, we have undertaken to prepare a revised version of the draft memorandum on civil disturbance. Minor revisions have also been made in the standard executive orders. The revised draft memorandum incorporates all the items on which we reached agreement with the Office of Legal Counsel, along with two matters which they had no objection to, but which required your personal attention. These two matters are (1) public affairs responsibilities and (2) division of intelligence responsibilities.

I am attaching five copies of the revised documents for your use. The Under Secretary of the Army plans to contact you to arrange a meeting at which you, he, and I would see whether we can resolve these two matters prior to final submission of the draft to the Attorney General and the Secretary of Defense for their discussion.

Robert E. Jordan III,
General Counsel.

Evidentiary Materials Regarding Military Surveillance of Civilians in West Germany

WEST BERLIN

The following exhibits were provided the subcommittee by Senator Lowell Weicker of Connecticut. They describe certain activities of military intelligence units in West Berlin during 1972 and 1973. Each exhibit is described briefly below in an explanatory note prepared by the subcommittee staff.

Exhibit 1: Letter to Weicker aide.

This letter was sent to Mr. William Wickens, a staff aide to Senator Weicker, by a military intelligence agent stationed in West Germany. It describes in general the activities of Detachment B, 66th Military Intelligence Group, located in West Berlin.

Exhibit 2: "FORWARD" diagram

This diagram was found in the files of Detachment B which were designated as "CS", or countersubversive, files. The word "FORWARD" at the center of the diagram refers to *Forward* newspaper, an underground, antimilitary newspaper, then located in West Berlin. The initials L.M.D.C. refer to the Lawyers Military Defense Committee, a legal defense group affiliated with the ACLU, which specializes in defending servicemen at court martials. The initials C.A.I.B. refer to the Concerned Americans in Berlin. The author of the diagram is unknown.

Exhibit 3: Photographed mail

This exhibit is a photocopy of a letter and its accompanying envelope found in military intelligence files. The letter was sent by a reference librarian at the College of Charleston, Charleston, S.C., to "Where Its At," which was the original name of the publication now identified as "FORWARD" newspaper. The photocopies do not indicate what individual, unit, or organization was responsible for opening the mail or photographing it.

Exhibit 4: Agent report

Exhibit 4 is a portion of a report filed by an agent of the 66th Military Intelligence Group in West Berlin. It deals with the goals of the Concerned Americans in Berlin.

Exhibit 5: Memorandum on Concerned Americans in Berlin

This is a memorandum prepared by Detachment B, 66th Military Intelligence Group in Berlin on the membership, activities, history, and platform of the Concerned Americans in Berlin.

Exhibit 6: Briefing notes

These were briefing notes prepared by Detachment B for a briefing of Major General Harold Aaron, Chief of Staff for Intelligence, U.S. Army in Europe, on March 2, 1973.

Exhibit 1—Letter to Weicker Aide

WEST BERLIN, GERMANY,
June 10, 1973.

DEAR MR. BILL WICKENS: Hopefully the following information will assist you in the days ahead. I know the format may be suspect to logic but I trust that the attached material will speak for itself. Also, I must get this information to you without delay for the obvious security factors and the realistic danger I place myself and my family in. I understand if you have difficulty following the sequence of events or the rationale "why" military intelligence secretly gathered political information on American civilians in West Berlin. First, you should know that I'm part of an covert intelligence gathering countersubversion team in West Berlin (WB). Our mission then is to detect subversive activities within WB and report this information expeditiously to the following higher headquarters; 1) Commander 66th Military Intelligence Group—which was Col. Kelley—the Commander (new) now is Col. Evers; 2) MG Cobb, Commander of WB; 3) MG Arron, Deputy Chief of Staff Intelligence Heidelberg, Ger; 4) Col Ray, Deputy Chief of Staff Intelligence WB. There are numerous other people who must process this information but not sufficient time to list them here.

I am forwarding a brief amount of material to you concerning military intelligence (MI) clandestine investigations/targets/penetrations into the American political group called "Democrates for McGovern" and who after the presidential elections called themselves "The Concerned Americans in Berlin" (CAIB). The CAIB recently has called for the impeachment of President Nixon. There is a massive amount of collective intelligence material on this subject in several locations throughout Europe. The following is an initial attempt to answer in part your questions per your telephone instructions.

(1) Mission: Monitor American Democratic political meetings of CAIB. Insert coded Confidential Sources as penetration agents into these meetings to ascertain information concerning the meetings and identify members, Americans, leaders of CAIB. Compile dossiers on personalities and forward all information to higher headquarters.

(2) Authority: See electrical MSG "FM ODSCI USAREUR HEIDELBERG GER/AEAGB-CI(SO)" The Deputy Chief of Staff Intelligence is GM Arron. Note: Tasking instructions in this MSG. However, there are numerous other tasking instructions (MSG'S) and these can be provided at a later date. Also, note ODSCI Heidelberg passes these instructions to CDR 66th MI Group Munich and 66th MI in turn tasked Detachment B.

(3) Persons with knowledge of mission:
MG Arron, ODSCI Heidelberg
COL Kelly, CDR 66th MI Group
COL Bugh, Deputy CDR 66th MI Group
MG Cobb, Commander Berlin
COL Ray, Deputy Chief of Staff Intell, WB

Note: Names of other knowledgeable persons can be given at a later date.

(4) When: Starting in August 1972 and continuing at present time.

(5) Personnel on operational team: I desire to hold off naming these people for their security and their future careers in the Army.

(6) Distribution of information: See No. 3—All intelligence information gathered concerning MI activities against the Democrats for McGovern and CAIB is carded, filled and placed in dossiers at my office and several other locations throughout Europe.

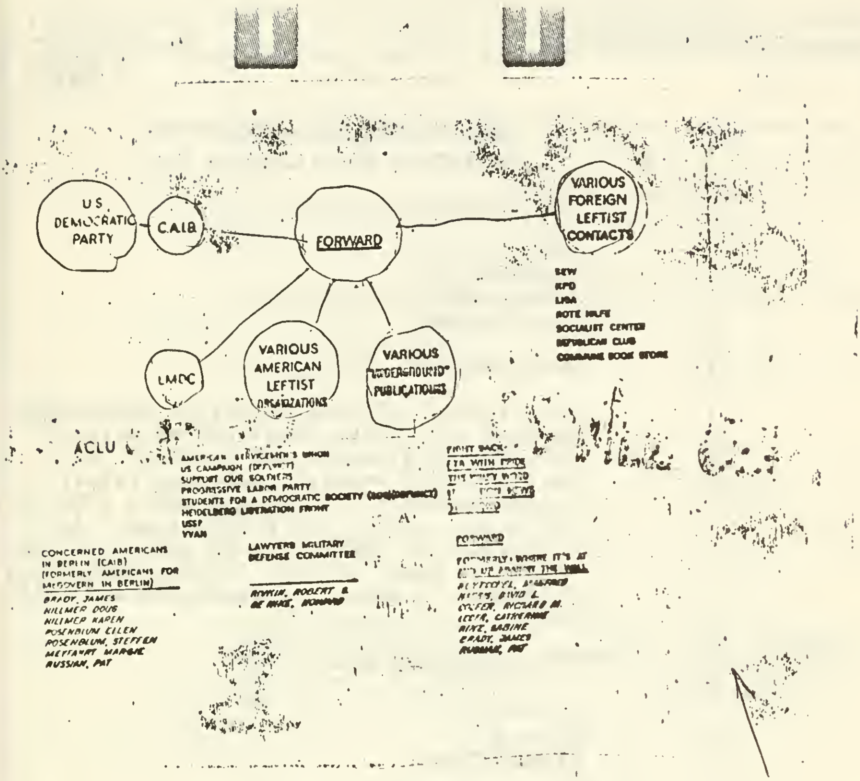
(7) Description of mission/tactics used/target: Our mission is to detect subversive activities in WB. However, our mission here was to collect information concerning the activities of the American group, Democrats for McGovern and later the CAIB. We recruited low ranking military men to penetrate meetings conducted by CAIB and then have the source meet with their case officer for debriefing. All the coded "Confidential Sources" are known to me by name. However, I see no point in revealing their identity at this time. Again, these sources are usually recruited young low ranking military men who will "fit in" with CAIB without arousing any undue attention. The operation is still in effect and the operation has been highly successful thus far. During source meetings, the officer case instructs the source concerning security training and means to further establish his credibility within CAIB. Also, source has been provided a camera by MI to take pictures of CAIB members.

(8) Photographs: See attached material.

Bill if I have left questions and blank spots in your mind it is due to the difficulty of writing a summary of a massive amount of collected material. Also, I must get this in the mail to you—can't afford to hang on this material. Frankly, I was amazed when I discovered from my review of the files of the voluminous material that has been collected and filed. For my own part, I consider myself a citizen-soldier and I believe American constitutional guarantees have been violated. Again, I request to remain anonymous and seek protection by your office. You have assured me of the above and I place my faith and trust in the sure knowledge of your confidence.

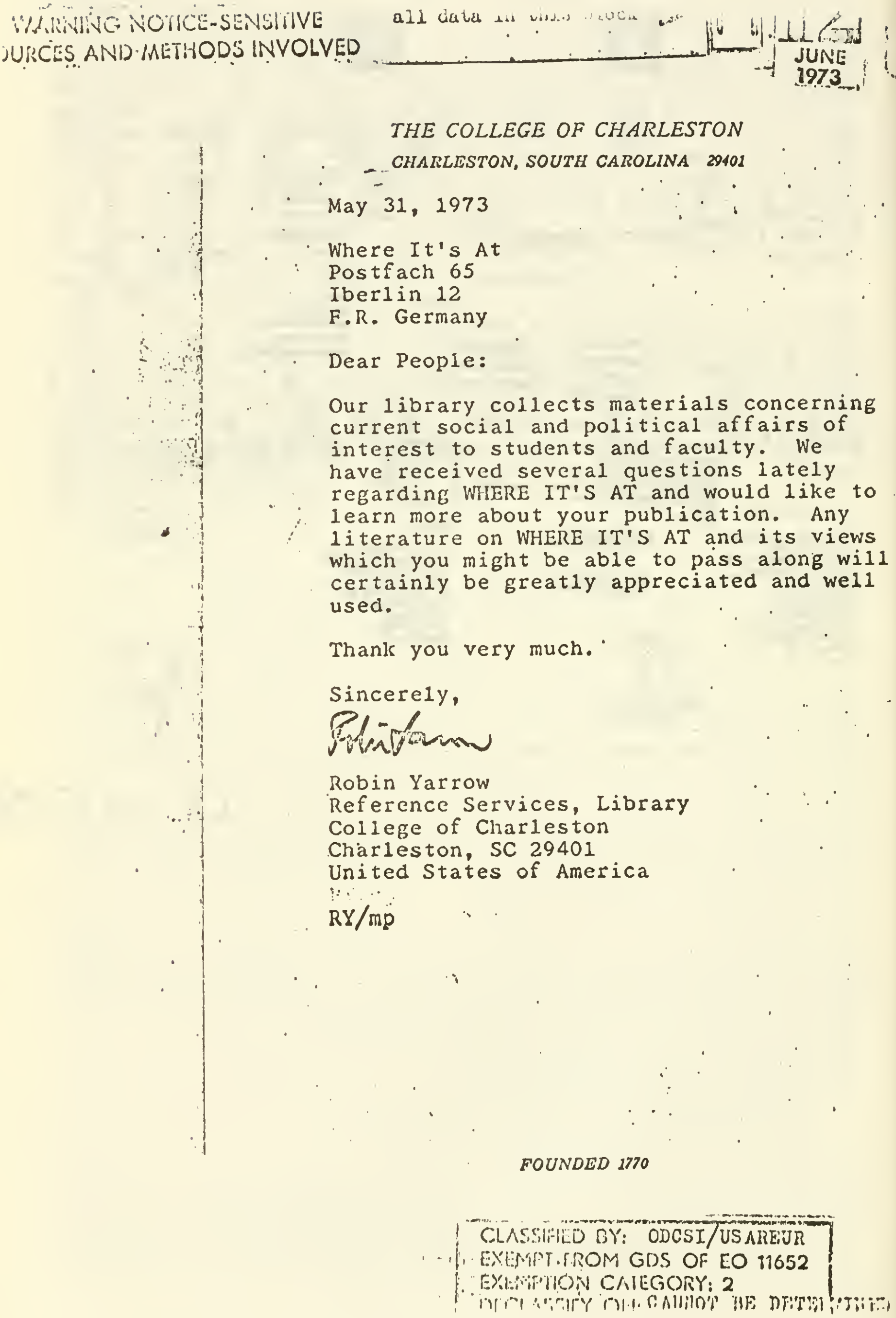
(unsigned).

Exhibit 2 – "Forward" Diagram


U.S. DEMOCRATIC PARTY
CAIB
FORWARD
VARIOUS FOREIGN LEFTIST CONTACTS
SEW
KPD
LIGA
ROTE HILFE
SOCIALIST CENTER
REPUBLICAN CLUB
COMMUNE BOOK STORE
LMDC
VARIOUS AMERICAN LEFTIST ORGANIZATIONS
VARIOUS "UNDERGROUND" PUBLICATIONS
ACLU
AMERICAN SERVICEMEN'S UNION
US CAMPAIGN (DEFUNCT)
SUPPORT OUR SOLDIERS
PROGRESSIVE LABOR PARTY
STUDENTS FOR A DEMOCRATIC SOCIETY (SDS)(DEFUNCT)
HEIDELBERG LIBERATION FRONT
USSP
YVAN
FIGHT BACK
(TA WITH ...
THE ... WORD
... NEWS
CONCERNED AMERICANS IN BERLIN (CAIB) (FORMERLY AMERICANS FOR McGOVERN IN BERLIN)
BRADY, JAMES
HILLMER DOUG
HILLMER KAREN
ROSENBLUM EILEN
ROSENBLUM, STEFFEN
MEYFAHRT MARGIE
RUSSIAN, PAT
LAWYERS MILITARY DEFENSE COMMITTEE
RIVKIN, ROBERT S
DE WHAT, HOWARD
FORWARD
FORMERLY: WHERE IT'S AT
... UP AGAINST THE WALL
... MANFRED
..., DAVID L
..., RICHARD M.
..., CATHERINE
..., SABINE
BRADY, JAMES
RUSSIAN, PAT

CS FILE COPY

Exhibit 3 – Photographed Mail



WARNING NOTICE-SENSITIVE
OURCES AND METHODS INVOLVED

all data in this block

JUNE
1973

THE COLLEGE OF CHARLESTON
CHARLESTON, SOUTH CAROLINA 29401

May 31, 1973

Where It's At
Postfach 65
Iberlin 12
F.R. Germany

Dear People:

Our library collects materials concerning current social and political affairs of interest to students and faculty. We have received several questions lately regarding WHERE IT'S AT and would like to learn more about your publication. Any literature on WHERE IT'S AT and its views which you might be able to pass along will certainly be greatly appreciated and well used.

Thank you very much.

Sincerely,

Robin Yarrow

Robin Yarrow
Reference Services, Library
College of Charleston
Charleston, SC 29401
United States of America

RY/mp

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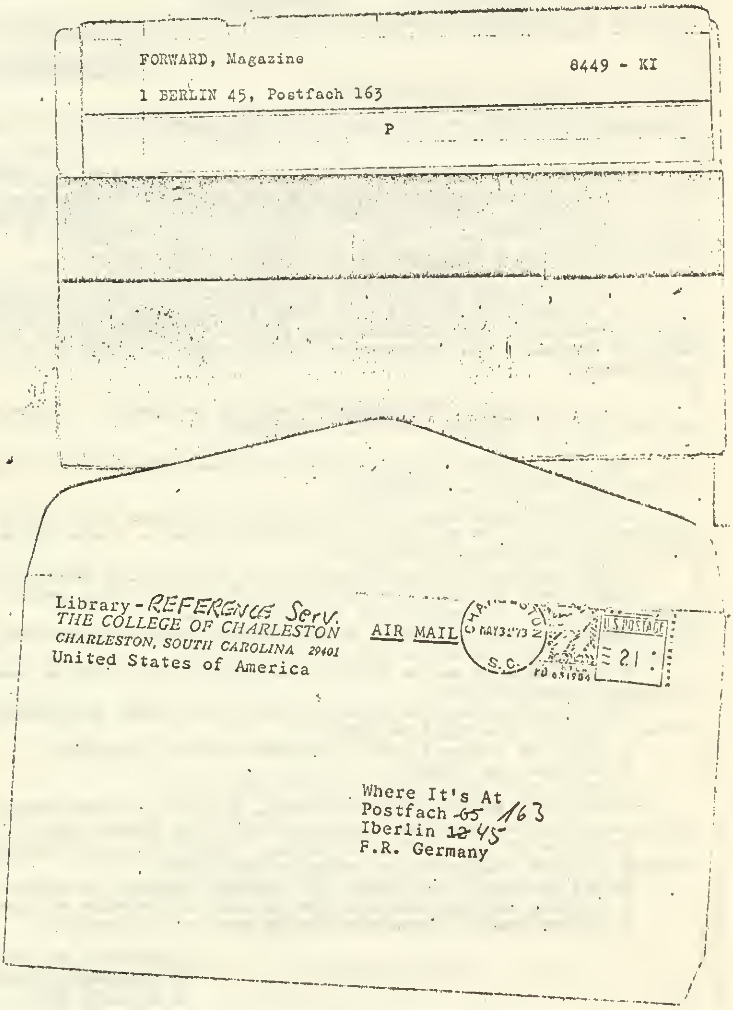
DECLASSIFY ON: CANNOT BE DETERMINED

URCES AND METHODS INVOLVED JUNE 1973 154



FORWARD, Magazine 8449 - KI

1 BERLIN 45, Postfach 163

P

Library - REFERENCE Serv.
THE COLLEGE OF CHARLESTON
CHARLESTON, SOUTH CAROLINA 29401
United States of America

AIR MAIL

CHARLESTON S.C. MAY 31 '73

U.S. POSTAGE 21

Where It's At
Postfach ~~65~~ 163
Iberlin ~~12~~ 45
F.R. Germany

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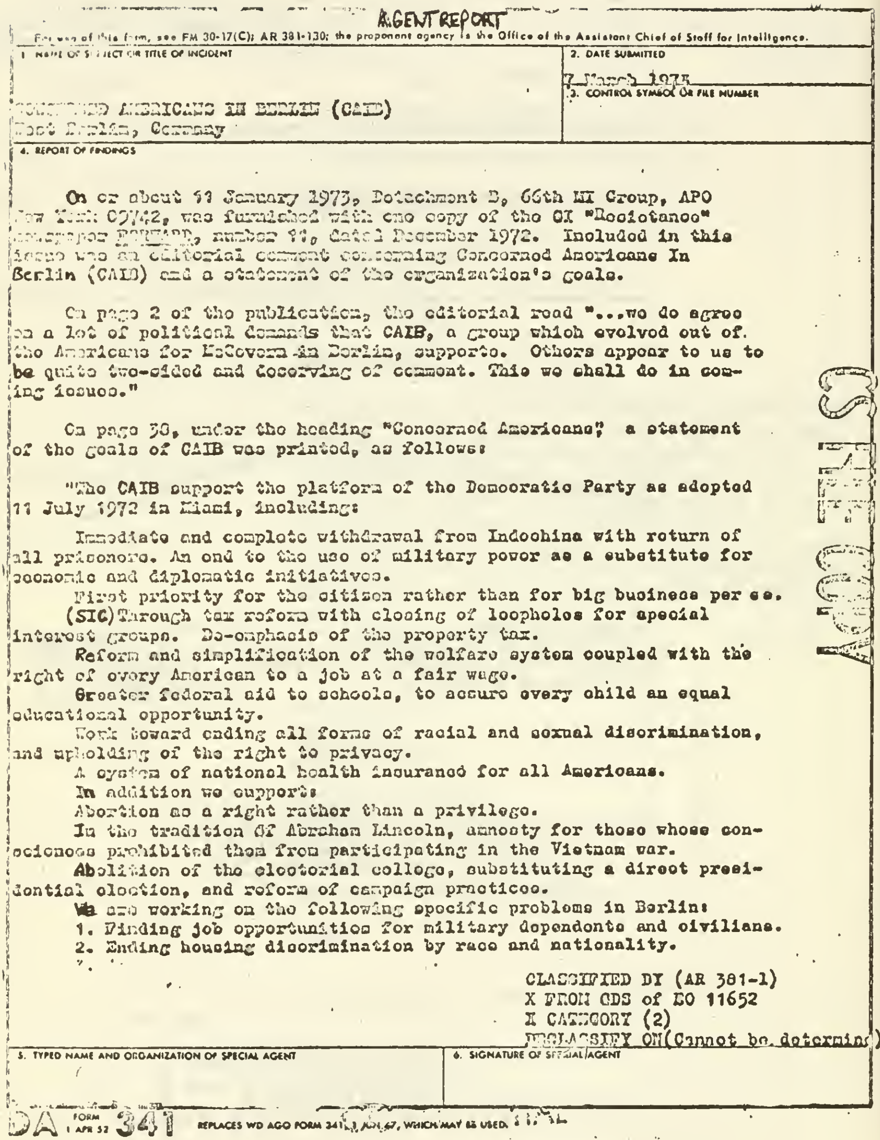
Exhibit 4—Agent Report



AGENT REPORT

For use of this form, see FM 30-17(C); AR 381-130; the proponent agency is the Office of the Assistant Chief of Staff for Intelligence.

1. NAME OF SUBJECT OR TITLE OF INCIDENT

CONCERNED AMERICANS IN BERLIN (CAIB)
West Berlin, Germany

2. DATE SUBMITTED

7 March 1973

3. CONTROL SYMBOL OR FILE NUMBER

4. REPORT OF FINDINGS

On or about 11 January 1973, Detachment B, 66th MI Group, APO New York 09742, was furnished with one copy of the GI "Resistance" newspaper FORWARD, number 11, dated December 1972. Included in this issue was an editorial comment concerning Concerned Americans In Berlin (CAIB) and a statement of the organization's goals.

On page 2 of the publication, the editorial read "...we do agree on a lot of political demands that CAIB, a group which evolved out of the Americans for McGovern in Berlin, supports. Others appear to us to be quite two-sided and deserving of comment. This we shall do in coming issues."

On page 30, under the heading "Concerned Americans" a statement of the goals of CAIB was printed, as follows:

"The CAIB support the platform of the Democratic Party as adopted 11 July 1972 in Miami, including:

Immediate and complete withdrawal from Indochina with return of all prisoners. An end to the use of military power as a substitute for economic and diplomatic initiatives.

First priority for the citizen rather than for big business per se.

(SIC)Through tax reform with closing of loopholes for special interest groups. De-emphasis of the property tax.

Reform and simplification of the welfare system coupled with the right of every American to a job at a fair wage.

Greater federal aid to schools, to assure every child an equal educational opportunity.

Work toward ending all forms of racial and sexual discrimination, and upholding of the right to privacy.

A system of national health insurance for all Americans.

In addition we support:

Abortion as a right rather than a privilege.

In the tradition of Abraham Lincoln, amnesty for those whose conscience prohibited them from participating in the Vietnam war.

Abolition of the electorial college, substituting a direct presidential election, and reform of campaign practices.

We are working on the following specific problems in Berlin:

1. Finding job opportunities for military dependents and civilians.
2. Ending housing discrimination by race and nationality.

CLASSIFIED BY (AR 381-1)
X FROM GDS of EO 11652
X CATEGORY (2)
DECLASSIFY ON(Cannot be determin)

5. TYPED NAME AND ORGANIZATION OF SPECIAL AGENT

6. SIGNATURE OF SPECIAL AGENT

DA FORM 1 APR 52 341 REPLACES WD AGO FORM 341, 1 JUN 47, WHICH MAY BE USED.

AGENT REPORT

For use of this form, see FM 30-17(C); AR 381-130: the proponent agency is the Office of the Assistant Chief of Staff for Intelligence.

1. NAME OF SUBJECT OR TITLE OF INCIDENT

CONCERNED AMERICANS IN BERLIN (CAIB)
West Berlin, Germany

2. DATE SUBMITTED

7 March 73

3. CONTROL SYMBOL OR FILE NUMBER

4. REPORT OF FINDINGS

3. Assisting all Americans in Berlin, both military and non-military, with the transition from American to European living. This includes services such as arranging German tutors, a food cooperative, and general orientation."

The statement ended with: "Concerned Americans in Berlin For information call: 263 7793.

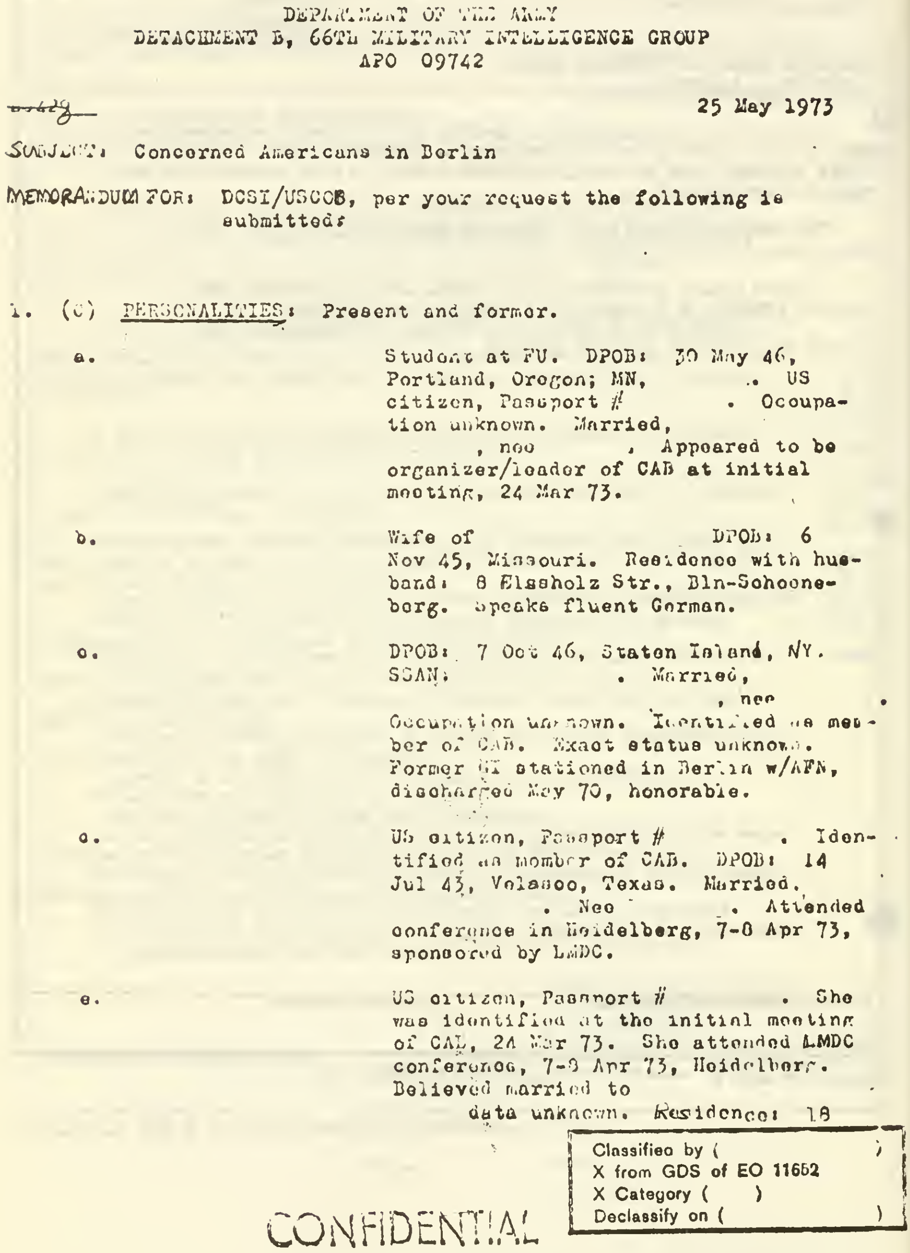
AGENT'S NOTES: Reference Agent Report, dated 10 January 1973, Subject: FORWARD, G I Resistance Newspaper, prepared by Det D, 66th MI Group, for additional information concerning the December issue of FORWARD.

5. TYPED NAME AND ORGANIZATION OF SPECIAL AGENT

6. SIGNATURE OF SPECIAL AGENT

DA FORM 1 APR 52 341 REPLACES WD AGO FORM 341, 1 JUN 47, WHICH MAY BE USED.

Exhibit 5 – Memorandum on Concerned Americans in Berlin



DEPARTMENT OF THE ARMY
DETACHMENT B, 66TH MILITARY INTELLIGENCE GROUP
APO 09742

25 May 1973

SUBJECT: Concerned Americans in Berlin

MEMORANDUM FOR: DCSI/USCOB, per your request the following is submitted:

1. (C) PERSONALITIES: Present and former.

a. Student at FU. DPOB: 30 May 46, Portland, Oregon; MN, . US citizen, Passport # . Occupation unknown. Married, , nee . Appeared to be organizer/leader of CAB at initial meeting, 24 Mar 73.

b. Wife of DPOB: 6 Nov 45, Missouri. Residence with husband: 8 Elsholz Str., Bln-Schoeneberg. Speaks fluent German.

c. DPOB: 7 Oct 46, Staten Island, NY. SSAN: . Married, , nee . Occupation unknown. Identified as member of CAB. Exact status unknown. Former GI stationed in Berlin w/AFN, discharged May 70, honorable.

d. US citizen, Passport # . Identified as member of CAB. DPOB: 14 Jul 43, Velasco, Texas. Married. . Nee . Attended conference in Heidelberg, 7-8 Apr 73, sponsored by LMDC.

e. US citizen, Passport # . She was identified at the initial meeting of CAB, 24 Mar 73. She attended LMDC conference, 7-8 Apr 73, Heidelberg. Believed married to data unknown. Residence: 18

Classified by ( )
X from GDS of EO 11652
X Category ( )
Declassify on ( )

CONFIDENTIAL

Bamberger Str., Bln-Wilmersdorf. Believed student at FU.

f. DPOB: 26 Sep 42, New York; MN, . Physicist at FU. Believed member of CAB, exact status of activity unknown.

g. Former SP4, HQ Co., Special Troops, BB. Reassigned 21st Replacement Bn, Frankfurt, then ETS, Apr 73. Spoke at initial meeting of CAB concerning his pending court-martial, 26 Mar 73. Also worked with FORWARD group. Believed to be returning to Berlin, date unknown. Brother, , believed still in Berlin.

h. Lawyer with LMDC, Heidelberg. Attended initial CAB meeting in conjunction with defense of , Has had contact with CAB members since in initial meeting, also with FORWARD.

i. Known to be in contact with members of CAB and FORWARD for "aid" to GI's. Lawyer with LMDC.

j. US citizen, Passport . DPOB: 3 Jun 41, New York. Married, . Occupation Student. Believed to be affiliated with CAB. No other information known.

k. US citizen, Passport . DPOB: 10 Aug 43, Washington. Married, . Believed to be affiliated with CAB. Exact connection unknown.

l. German national. Residence: Waldenser Str. 7A, Bln 21. Believed to be affiliated with CAB. Exact connection unknown.

m. Identifying data not found. Name has been mentioned in connection with CAB since initial meeting. LAC's and other investigation revealed no information on identity.

2. (C) HISTORY:

CAB emerged from a group of persons, Americans in Berlin for McGovern, which distributed information in support of McGovern, August 1972. The first notification of CAB was published in Issue #11, of FORWARD, December 1972. This notification contained the CAB Platform, which appears below. The notice also listed a contact telephone number, 213-7795, which is listed as
On 24 March 1973, CAB held an initial meeting at the ESG Heim, near the FU. This meeting was publicized throughout the American Community via a leaflet which was posted at various locations and distributed at others. CAB members are also known to have participated in the GI Rights Conference, sponsored by the LMDC, 7-8 April 1973. They have reportedly been in contact with a few leftist groups, the KPD, etc., but at present they are not known to have any affiliation with radical leftists. Some contact with FORWARD has been exhibited, but recent information indicates that FORWARD members do not want to promote further contact.

3. (C) PLATFORM:

The following is quoted from the above referenced copy of FORWARD:
"The Concerned Americans in Berlin support the platform of the Democratic Party as adopted July 11, 1972, in Miami, including:

> Immediate and complete withdrawal from Indochina with return of all prisoners. An end to the use of military power as a substitute for economic and diplomatic initiatives.
>
> Thorough tax reform with closing of loopholes for special interest groups. De-emphasis of the property tax.
>
> First priority for the citizen rather than for big business per se. Reform and simplification of the welfare system coupled with the right of every American to a job at a fair wage.
>
> Greater federal aid to schools, to assure every child an equal educational opportunity.
>
> Work toward ending all forms of racial and sexual discrimination, and upholding of the right to privacy.

A system of national health insurance for all Americans.

In addition we support:

Abortion as a right rather than a privilege.

In the tradition of Abraham Lincoln, amnesty for those whose consciences prohibited them from participating in the Vietnam war.

Abolition of the electoral college, substituting a direct presidential election, and reform of campaign practices.

We are working on the following specific problems in Berlin:

1. Finding job opportunities for military dependents and civilians.

2. Ending housing discrimination by race and nationality.

3. Assisting all Americans in Berlin, both military and non-military, with the transition from American to European living. This includes services such as arranging German tutors, a food cooperative, and general orientation."

4. (C) CONSTITUTION:

CAB is reported to have adopted the Bill of Rights from the US Constitution as its own constitution. No further information concerning this action has been reported.

5. (C) ACTIVITIES:

a. Past: Distribution of literature and petitions in support of SEN George McGovern, August 1972, in and around the American Community, Berlin. Attendance at LMDC Conference, 7-8 April 1973, Heidelberg, and attempting to establish a GI Rights counselling service to inform GI's of their rights and counsel them in the use of the UCMJ when they face court-martial or Article 15 punishment.

b. Present: Distribution of leaflets and petitions calling for the impeachment of President Nixon. Association with and involvement with US dependents/civilians thereby gaining greater access to the American Community for the perpetration of their aims. No dependents/civilians or US servicemen have been positively identified by name or photograph. Unidentified individuals allegedly associated with CAB, have been observed and reported as collecting signatures and distributing literature in and around the main PX, Berlin Brigade.

It was also reported that CAB has petitioned the Democratic Party in the US for membership, NFI.

c. Future: Observation of past and present activities of CAB does not give a great deal of indication as to what they may do in the future. It is expected that they will follow their present trend, a somewhat conservative approach, i.e., controlled protest. It is also possible that they may seek greater support from the American Community, either GI's, civilians, and/or dependents. No definite future plans of CAB are known at this time.

6. (C) ASSOCIATIONS:-

CAB is known to have tried to establish associations with the KPD and LIGA, but it was reported that these attempts failed to produce an alliance. It was also reported that they have contacted various groups, NFI, of non-Germans, but no further results have been reported about these attempted contacts.

7. (C) SUMMARY:

CAB presents a considerably smaller picture, but much the same as, the more outspoken, Democratic oriented politicians in the US. They offer no present indication of subversive activities either among or around the US military. The actions of CAB, to date, have been strictly within the legal rights of US citizens. They appear to be aware of the monitoring attempts by US authorities, but reactions to the monitoring present an air of mild discomfort or anger, and little more. The lack of enthusiasm by FORWARD to promote a continuing association with CAB, indicates that perhaps the attitude of CAB does not approach the slightly more radical degree of FORWARD.

FOR THE COMMANDER:

CPT, MI
Operations Officer

Exhibit 6—Briefing Notes

"CONCERNED AMERICANS IN BERLIN (CAIB)"
(Notes for a briefing for MG Aaron, 2 Mar 73)

BACKGROUND: THE "CONCERNED AMERICANS IN BERLIN (CAIB)" GROUP WAS FORMED IN AUGUST 1972, AS THE "AMERICANS FOR MCGOVERN IN BERLIN", TO SUPPORT THE CANDIDACY OF SENATOR MCGOVERN. THEIR ACTIVITIES APPEAR TO HAVE BEEN LIMITED TO ORGANIZATIONAL MEETINGS, LEAFLET DISTRIBUTION, AND ANNOUNCEMENTS IN LOCAL PUBLICATIONS. IT IS NOT KNOWN IF THE GROUP HAD THE OFFICIAL BACKING OF THE DEMOCRATIC PARTY'S OVERSEAS BRANCH, BUT IT IS BELIEVED THAT THERE WAS SOME CONTACT WITH THE OFFICIAL PARTY. IT IS KNOWN THAT , ONE OF THE LEADERS IN THE GROUP, RECEIVED AN AUTOGRAPHED PICTURE OF SENATOR MCGOVERN. THEIR ATTEMPTS TO ORGANIZE THE AMERICAN COMMUNITY IN WEST BERLIN ARE NOT BELIEVED TO BE NOTABLY SUCCESSFUL. MRS , FOR EXAMPLE, WAS PUZZLED OVER THE LACK OF RESPONSE FROM THE MILITARY COMMUNITY. SHE GENERALLY ATTRIBUTED IT TO APATHY AMONG THE AMERICANS. THE GROUP CAME TO OUR ATTENTION AGAIN WITH THE DECEMBER ISSUE OF FORWARD, THE "GI UNDERGROUND NEWSPAPER" BASED IN WEST BERLIN. THIS ISSUE, WHICH ALSO DEVOTED SIGNIFICANT SPACE TO MILITARY JUSTICE AND THE "LAWYERS' MILITARY DEFENSE COMMITTEE" IN HEIDELBERG, DESCRIBED THE ORGANIZATION AS "A RELEVANT POLITICAL INITIATIVE IN BERLIN OUTSIDE THE REALM OF NORMAL ARMY DEPENDENT ACTIVITIES". CAIB PUBLISHED IN THIS ISSUE A STATEMENT CONCERNING IT'S PLATFORM. CONCERNING THIS, FORWARD COMMENTED "... WE DO AGREE ON A LOT OF POLITICAL DEMANDS THAT CAIB, A GROUP WHICH EVOLVED OUT OF THE AMERICANS FOR MCGOVERN IN BERLIN, SUPPORTS. OTHERS APPEAR TO US TO BE QUITE TWO-SIDED AND DESERVING OUR COMMENT." IN FEBRUARY, 1973, CAIB ONCE AGAIN CAME TO OUR ATTENTION WHEN LEAFLETS WERE DISTRIBUTED NEAR US MILITARY INSTALLATIONS INVITING

Classified by (AR381-1)
X from GDS of EO 11652
X Category (2)
Declassify on (Cannot be determined)

CONFIDENTIAL

THE READER TO A CONFERENCE ON "G.I. RIGHTS AND AMERICAN CIVIL LIBERTIES" TO BE HELD ON 24 FEBRUARY 1973 AT THE EVANGELISCHE STUDENTEN GEMEINDE (ESG) HEIM NEAR THE FREE UNIVERSITY (FU) IN THE VICINITY OF BERLIN BRIGADE HQS COMPOUND. THE LEAFLET STATED THAT "GUEST SPEAKERS FROM THE AMERICAN CIVIL LIBERTIES UNION, LAWYERS MILITARY DEFENSE COMMITTEE, AND THE BERLIN MILITARY" WOULD BE PRESENT. DURING THE SAME PERIOD, THE GROUP ATTEMPTED TO CONTACT AMERICAN STUDENTS AT THE FREE UNIVERSITY (FU) BY MAIL, USING OFFICIAL FU FRANKED ENVELOPES. ENCLOSED WITHIN THE ENVELOPE WAS A COPY OF THE SAME LEAFLET MENTIONED BEFORE PLUS A SHORT TYPE WRITTEN NOTE INVITING THE READER TO CONTACT THE GROUP AT THE KENNEDY INSTITUTE (FU), LANSSTR. 5-9, RM 227. INTERESTED PARTIES COULD ALSO CONTACT THE WRITER, , AT 1 BLN 30, ELSSHOLZSTR. 8. IN HIS NOTE, COMMENTED THAT THE AKADEMISCHES AUSLANDSAMT HAS THE ONLY MAILING LIST OF AMERICAN STUDENTS AT THE FU, BUT WERE NOT ALLOWED TO SHOW IT TO ANY INDIVIDUAL OR GROUP. SO THEY HAD ONE OF THEIR (FU) WORKERS ADDRESS THE GROUP'S LETTERS TO EACH STUDENT. ACCORDING TO IT COST THE GROUP "30 DM A SHOT". ON 13 FEBRUARY 1973, A LETTER WAS SENT TO THE PUBLIC INFORMATION OFFICE, BLN BDE, REQUESTING PUBLICITY FOR THE CONFERENCE ON "GI RIGHTS AND AMERICAN CIVIL LIBERTIES". THIS LETTER, CONTAINING ESSENTIALLY THE SAME INFORMATION AS THE LEAFLETS, WAS SIGNED BY ONE FOR "CONCERNED AMERICANS IN BERLIN". THE MEETING WAS HELD ON 24 FEB AS SCHEDULED AND LASTED FROM 1430 HRS TO 1755 HRS. IT WAS FOLLOWED BY AN INFORMAL PARTY AT THE SAME LOCATION FROM 2000 HRS TO APPROXIMATELY 2400 HRS. ACTING AS "CO-CHAIRMEN" OF THE MEETING WAS AND (PHONETIC).

APPROXIMATELY 50 PEOPLE WERE IN ATTENDANCE OF WHICH, APPROXIMATELY 15 MAY HAVE BEEN US MILITARY PERSONNEL. OF THE LATTER, TWO IDENTIFIED THEMSELVES AS MEMBERS OF THE US ARMY. THE MEETING BEGAN WITH SOME BRIEF BACKGROUND REMARKS BY CONCERNING THE BACKGROUND OF THEIR ORGANIZATION. THEN, HE INTRODUCED

A LAWYER OF THE LAWYERS MILITARY DEFENSE COMMITTEE (LMDC), LOCATED IN HEIDELBERG. IS AN ASSOCIATE OF ALSO OF THE HEIDELBERG OFFICE AND AUTHOR OF TWO BOOKS CONCERNING MILITARY JUSTICE.

PROVIDED A BACKGROUND OF THE LMDC AND A DESCRIPTION OF THE MILITARY JUSTICE SYSTEM. FOLLOWING HIS PRESENTATION, A FEW BRIEF REMARKS WERE MADE BY A REPRESENTATIVE OF THE "UNION OF AMERICAN EXILES IN BRITAIN" WHO DESCRIBED THE ACTIVITIES OF HIS GROUP. FOLLOWING THIS, TWO AMERICAN SOLDIERS, IDENTIFIED AS SP4 AND SGT BOTH OF SPECIAL TROOPS, HHC, BLN BDE, ANDREWS BARRACKS, PRESENTED A DESCRIPTION OF THEIR MISADVENTURES WITH THE ARMY. , WHO HAD TWO PREVIOUS "ART. 15s" STATED THAT HE WAS TO GO TO TRIAL THE FOLLOWING MONDAY FOR ASSAULT. FURTHER, THAT HE WAS TO BE DEFENDED BY . DURING A QUESTION-ANSWER PERIOD FOLLOWING, IN RESPONSE TO A QUESTION AS TO WHAT THE CIVILIANS COULD DO, THE AUDIENCE WAS URGED TO ATTEND THE COURT MARTIAL, PRESUMABLY TO INFLUENCE THE COURT. (THE TURN OUT FOR THE TRIAL HOWEVER, WAS VERY POOR). DURING THE QUESTION-ANSWER PERIOD, AN UNIDENTIFIED BLACK MALE, BELIEVED TO BE , A FORMER SP5 ASSIGNED TO THE SAME COMPANY AS AND , BUT RECENTLY DISCHARGED, TOOK THE FLOOR AND DELIVERED AN EMOTIONAL MONOLOGUE CONCERNING HIS PROBLEMS IN THE ARMY.

IT IS BELIEVED THAT THERE ARE CONTACTS WITH FORWARD, BUT TO WHAT

EXTENT CANNOT NOW BE ASCERTAINED. THESE TIES ARE ASSUMED BECAUSE THERE WAS THE DESCRIPTION IN FORWARD'S DECEMBER ISSUE AND THERE WERE MEMBERS OF THE FORWARD STAFF PRESENT DURING THE 24 FEBRUARY MEETING.

FURTHER, AN INTERCEPT IN JANUARY IMPLIED SOME CONTACT BETWEEN , THE INDIVIDUAL USUALLY LISTED AS RESPONSIBLE FOR FORWARD, AND MEMBERS OF THE MCGOVERN GROUP OR CAIB.

CONFIDENTIAL

GOALS: IN THE DECEMBER 1972 ISSUE OF THE BERLIN BASED "GI UNDERGROUND NEWSPAPER", THE CAIB ISSUED A STATEMENT OF ITS GOALS:

1. CAIB SUPPORTS THE PLATFORM OF THE DEMOCRATIC PARTY AS ADOPTED 11 JULY 1972 IN MIAMI, INCLUDING:

A. IMMEDIATE AND COMPLETE WITHDRAWAL FROM INDOCHINA WITH RETURN OF ALL PRISONERS. AN END TO THE USE OF MILITARY POWER AS A SUBSTITUTE FOR ECONOMIC AND DIPLOMATIC INITIATIVES.

B. FIRST PRIORITY FOR THE CITIZEN RATHER THAN FOR BIG BUSINESS PER SE. THROUGH TAX REFORMS WITH CLOSING OF LOOPHOLES FOR SPECIAL INTEREST GROUPS. DE-EMPHASIS OF THE PROPERTY TAX.

C. REFORM AND SIMPLIFICATION OF THE WELFARE SYSTEM COUPLED WITH THE RIGHT OF EVERY AMERICAN TO A JOB AT A FAIR WAGE.

D. GREATER FEDERAL AID TO SCHOOLS, TO ASSURE EVERY CHILD AN EQUAL EDUCATIONAL OPPORTUNITY.

E. WORK TOWARD ENDING ALL FORMS OF RACIAL AND SEXUAL DISCRIMINATION AND UPHOLDING THE RIGHT TO PRIVACY.

F. A SYSTEM OF NATIONAL HEALTH INSURANCE FOR ALL AMERICANS.

2. IN ADDITION, CAIB SUPPORTS:

A. ABORTION AS A RIGHT RATHER THAN A PRIVILEGE .

B. IN THE TRADITION OF ABRAHAM LINCOLN, AMNESTY FOR THOSE WHOSE CONSCIENCES PROHIBITED THEM FROM PARTICIPATING IN THE VIETNAM WAR.

C. ABOLITION OF THE ELECTORAL COLLEGE, SUBSTITUTING A DIRECT PRESIDENTIAL ELECTION, AND REFORM OF CAMPAIGN PRACTICES.

3. CAIB IS WORKING ON THE FOLLOWING SPECIFIC PROBLEMS IN BERLIN:

A. FINDING JOB OPPORTUNITIES FOR MILITARY DEPENDENTS AND CIVILIANS

B. ENDING HOUSING DISCRIMINATION BY RACE AND NATIONALITY

CONFIDENTIAL

PERSONALITIES ASSOCIATED WITH CAIB: ACCORDING TO MRS , THERE ARE ONLY ABOUT EIGHT ACTIVE MEMBERS. SHE DID NOT KNOW MOST OF THOSE WHO ATTENDED THE 24 FEBRUARY MEETING. PERSONALITIES IDENTIFIED WITH CAIB ARE AS FOLLOWS:

1. - Apparent leader

2.

3. - (PHONETIC) - Co-Chairman with during the 24 February meeting

4. - wife of

5. - participant during 24 Feb meeting. Also attended trial of

6. - attended trial of

7. - attended trial of

8. - attended trial of

9. - attended trial of

10. , Sp4, , Sp Trops, HHC, Bln Bde, Andrews Barracks

11. , brother of , civilian residing in W-Berlin

12. , SGT, , HHC, Bln Bde, Andrews Barracks

13. , formerly SP5, , HHC, Bln Bde

14. . - Lawyers Military Defense Committee representative at 24 Feb meeting and lawyer for

15. - a member of the Airforce, who according to Mrs is due for discharge after which he plans to remain in Berlin.

IT WAS NOTED THAT DURING THE MEETING OF 24 FEBRUARY, THERE WAS NO PARTICULAR ATTEMPT TO MEET THE GI'S OR SOLICIT THEIR SUPPORT. AT ONE POINT, A SHEET WAS PASSED AROUND SO THAT A MAILING LIST COULD BE STARTED. MOST OF THE GI'S, HOWEVER, REFRAINED FROM SIGNING.

C. ASSISTING ALL AMERICANS IN BERLIN, BOTH MILITARY AND NON-MILITARY, WITH THE TRANSITION FROM AMERICAN TO EUROPEAN LIVING. THIS INCLUDES SERVICES SUCH AS ARRANGING GERMAN TUTORS, A FOOD COOPERATIVE, AND GENERAL ORIENTATION.

DURING THE MEETING OF 24 FEBRUARY, THE GOALS AS STATED BY APPEARED TO BE SOMEWHAT VAGUE. HE DID STATE THAT THEY WERE INTERESTED IN WORKING ON A PROGRAM TO eliminate HOUSING DISCRIMINATION IN WEST BERLIN AND THERE WERE SOME BRIEF REMARKS CONCERNING SEEKING OFFICIAL STATUS UNDER THE OVERSEAS BRANCH OF THE DEMOCRATIC PARTY. BASED ON CONVERSATION WITH MRS , IT IS POSSIBLE THAT THE CONTINUATION OF THE GROUP AFTER THE ELECTION WAS LARGELY BASED ON "SOCIAL" RATHER THAN "POLITICAL" REASONS. THE ACTIVE MEMBERS ARE NEARLY ALL NON-MILITARY OR NON-US GOVT SPONSORED AND THEREFORE, CUT OFF FROM THE PREDOMINANTLY MILITARY/GOVERNMENT COMMUNITY. THE CAIB MEMBERSHIP, MADE UP OF INDIVIDUALS LARGELY ON THEIR OWN IN A FOREIGN ENVIRONMENT APPEAR TO BE SEEKING FRIENDS OF A COMMON BACKGROUND, INTERESTS, AND PROBLEMS.

HEIDELBERG

The following exhibits came to the attention of the subcommittee in the complaint filed by the American Civil Liberties Union in the case of *Berlin Democratic Club, et. al, v. Schlesinger, et. al.*, Civil Action No. 310–74, United States District Court for the District of Columbia on February 19, 1974. The materials describe certain intelligence activities of agents of the 527th Military Intelligence Battalion located in Kaiserslauten, West Germany. Each document, or series of documents, is briefly described in the explanatory notes below, which were prepared by the subcommittee staff.

Where reference is made to individuals who are plaintiffs in the aforementioned civil suit, their names have been retained in order to make the documents more comprehensible. The subcommittee regards the act of plaintiffs in making these documents public as a waiver of their objection to public identification. Names of other persons identified in the exhibits have been deleted.

Exhibit 7: Wiretap summaries

This exhibit consists of a series of agent reports containing summaries of wiretapped conversations occurring over the telephone of one Tomi Schwaetzer, alias Max Watts, of Heidelberg. Schwaetzer is identified as having been born in Vienna, Austria in 1928. He is now a reporter for the Liberation News Service in Heidelberg. The conversations summarized occurred during the period from June 20, 1973, to June 29, 1973. The reports contain only the summary of conversations, and some fragmentary notes by the investigating military agents.

Exhibit 8: Request for a handwriting sample

This exhibit consists of two documents pertaining to a request for a handwriting sample of Tomi Schwaetzer. The purpose of obtaining the handwriting sample is not specified. It is important to note that in the original message request from the 66th Military Intelligence Group to the 527th Military Intelligence Battalion, dated 26 June 1973, the subject is identified as "br-262." In the subsequent request that went from the 527th to its field office in Heidelberg, the subject is identified as Tomi Schwaetzer. This identification is important for understanding of later exhibits.

Exhibit 9: Message summary of wiretapped conversations

This message was sent from the 527th Military Intelligence Company to the 66th Military Intelligence Group on May 28, 1971. It summarizes several conversations occurring over the telephone of "br-262," which has been identified as Tomi Schwaetzer, during the period of May 21, 1971, until May 24, 1971.

Exhibit 10: Operations plans

This exhibit consists of portions of two counterintelligence operations plans prepared by members of the 66th Military Intelligence Group. Neither of the plans has been authenticated, but the formal military style indicates that they are probably genuine.

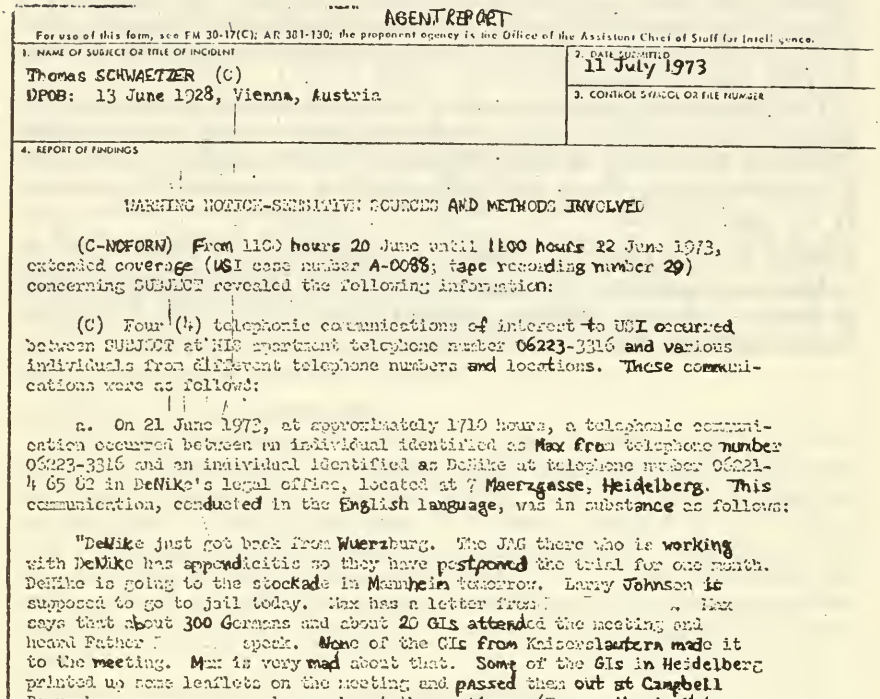
The first plan was purportedly hand-copied from the original, and many of the words were abbreviated in copying. The plan involves an investigation of a religious organization in Heidelberg known as the Goessner Mission. It was believed to be the meeting place for dissidents who were hostile to the military. The plan was signed by a military intelligence captain, and was apparently prepared after June 12, 1973. The subcommittee has not been able to ascertain whether the plan was ever carried out.

The second document purports to be a page from a draft plan proposing a counterintelligence operation against "br-262," who has been identified heretofore as Tomi Schwaetzer. The author of the plan is unknown, nor is there any indication that it was ever carried out. It was dated "2–73."

Exhibit 11: 8th Infantry Division (USAREUR) Regulation 381–25

This is a regulation promulgated on 23 July 1973 by the commander of the 8th Infantry Division, entitled "Counterdissidence Program." It was rescinded several months later.

Exhibit 7 – Wiretap Summaries



AGENT REPORT

For use of this form, see FM 30-17(C); AR 381-130; the proponent agency is the Office of the Assistant Chief of Staff for Intelligence.

1. NAME OF SUBJECT OR TITLE OF INCIDENT
Thomas SCHWAETZER (C)
DPOB: 13 June 1928, Vienna, Austria

2. DATE SUBMITTED
11 July 1973

3. CONTROL SYMBOL OR FILE NUMBER

4. REPORT OF FINDINGS

WARNING NOTICE-SENSITIVE SOURCES AND METHODS INVOLVED

(C-NOFORN) From 1100 hours 20 June until 1100 hours 22 June 1973, extended coverage (USI case number A-0088; tape recording number 29) concerning SUBJECT revealed the following information:

(C) Four (4) telephonic communications of interest to USI occurred between SUBJECT at HIS apartment telephone number 06223-3316 and various individuals from different telephone numbers and locations. These communications were as follows:

a. On 21 June 1973, at approximately 1710 hours, a telephonic communication occurred between an individual identified as Max from telephone number 06223-3316 and an individual identified as DeNike at telephone number 06221-4 65 82 in DeNike's legal office, located at 7 Maerzgasse, Heidelberg. This communication, conducted in the English language, was in substance as follows:

"DeNike just got back from Wuerzburg. The JAG there who is working with DeNike has appendicitis so they have postponed the trial for one month. DeNike is going to the stockade in Mannheim tomorrow. Larry Johnson is supposed to go to jail today. Max has a letter from . Max says that about 300 Germans and about 20 GIs attended the meeting and heard Father speak. None of the GIs from Kaiserslautern made it to the meeting. Max is very mad about that. Some of the GIs in Heidelberg printed up some leaflets on the meeting and passed them out at Campbell Barracks. also spoke at the meeting. (Transcriber's Note: SLO files show that is the leader of VOL in Frankfurt.) A collection was taken up at the meeting for Larry Johnson. Max thinks that maybe Johnson will donate it to LMDC. Max thinks that Stars & Stripes reporter gave the Johnson story to AFN. It was on the news last night. DeNike reveals that the last letter he had from indicated that was to arrive in Brussels on 23 June and it would take him several days to get to Heidelberg. DeNike will call . Max is going to try to get another set of negatives from the slides he got from ."

(cont'd)

5. TYPED NAME AND ORGANIZATION OF SPECIAL AGENT
Name deleted

6. SIGNATURE OF SPECIAL AGENT

DA FORM 341 REPLACES WD AGO FORM 341, 1 JUN 47, WHICH MAY BE USED.

p. 1 of
this report
missing

AGENT REPORT

For use of this form, see FM 30-17(C); AR 381-130; the proponent agency is the Office of the Assistant Chief of Staff for Intelligence.

1. NAME OF SUBJECT OR TITLE OF INCIDENT Thomas SCHMAETZER (C) DPOB: 13 June 19[illegible], Vienna, Austria	2. DATE SUBMITTED 11 July 1973 3. CONTROL SYMBOL OR FILE NUMBER

4. REPORT OF FINDINGS

b. On 21 June 1973, at approximately 1755 hours, a telephonic communication occurred between an individual identified as Max from telephone number 06223-3316 and an individual identified as at an undisclosed telephone number at the AFN, Kaiserslautern. This communication, conducted in the English language, was in substance as follows:

says that the story on Johnson was on the 0730 hours news yesterday in Kaiserslautern. thinks that (AFN) got it from CBS reporter, . Max is surprised that AFN did the story but is very happy about it. will try to get Max a transcript of the story. Max will send AFN his version of the Johnson story in return."

c. On 21 June 1973, at approximately 1931 hours a telephonic communication occurred between an individual identified as Max from telephone number 06223-3316 and an individual identified as , from an undisclosed telephone number at the Frankfurter Rundschau. This communication, conducted in the German language, was in substance as follows:

"Max explains that the American Nazi Party has been active in Frankfurt passing out leaflets. The leaflets deal with white power. Some of the themes are 'special rights for black savages; white power; and have you had enough white?' Max gives the address of the party as 2507 North Franklin Road, Arlington, VA. Their telephone number is 524 21 75. By calling 524 43 61 you hear a recorded message dealing with white power."

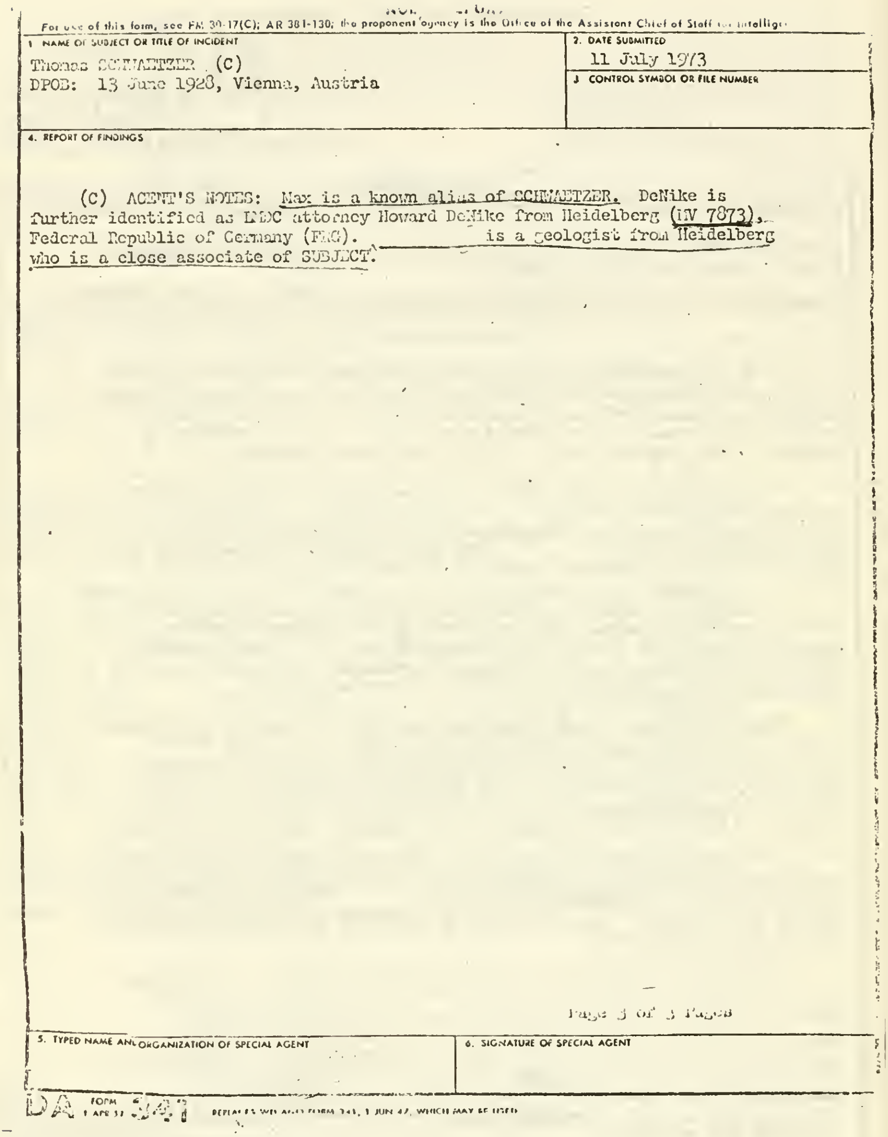
d. On 22 June 1973 at approximately 0955 hours, a telephonic communication occurred between an individual identified as Max from telephone number 06223-3316 and an individual identified as at telephone number 8 21 61 39 in Berlin. This communication, conducted in the German language, was translated as follows:

"Max relays the above story on the American Nazi Party. Max is angry because whenever the blacks or the GIs attempt to distribute papers the police are there to give them trouble. Max says that the police have done nothing to the members of this group. Max says that the leaflets are printed on very expensive paper and are very well done. Max relays that the Johnson story was on AFN. Max also reveals that the leaflets had swastikas on them. Max is sure that this is illegal in Germany. agrees. Max says that the articles in the leaflets advocate sending all of the blacks back to Africa."

Page 2 of 3 Pages

5. TYPED NAME AND ORGANIZATION OF SPECIAL AGENT	6. SIGNATURE OF SPECIAL AGENT

DA FORM 2… REPLACES … WHICH …



For use of this form, see FM 30-17(C); AR 381-130; the proponent agency is the Office of the Assistant Chief of Staff for Intelligence

1. NAME OF SUBJECT OR TITLE OF INCIDENT Thomas SCHWAETZER (C) DPOB: 13 June 1928, Vienna, Austria	2. DATE SUBMITTED 11 July 1973 3. CONTROL SYMBOL OR FILE NUMBER

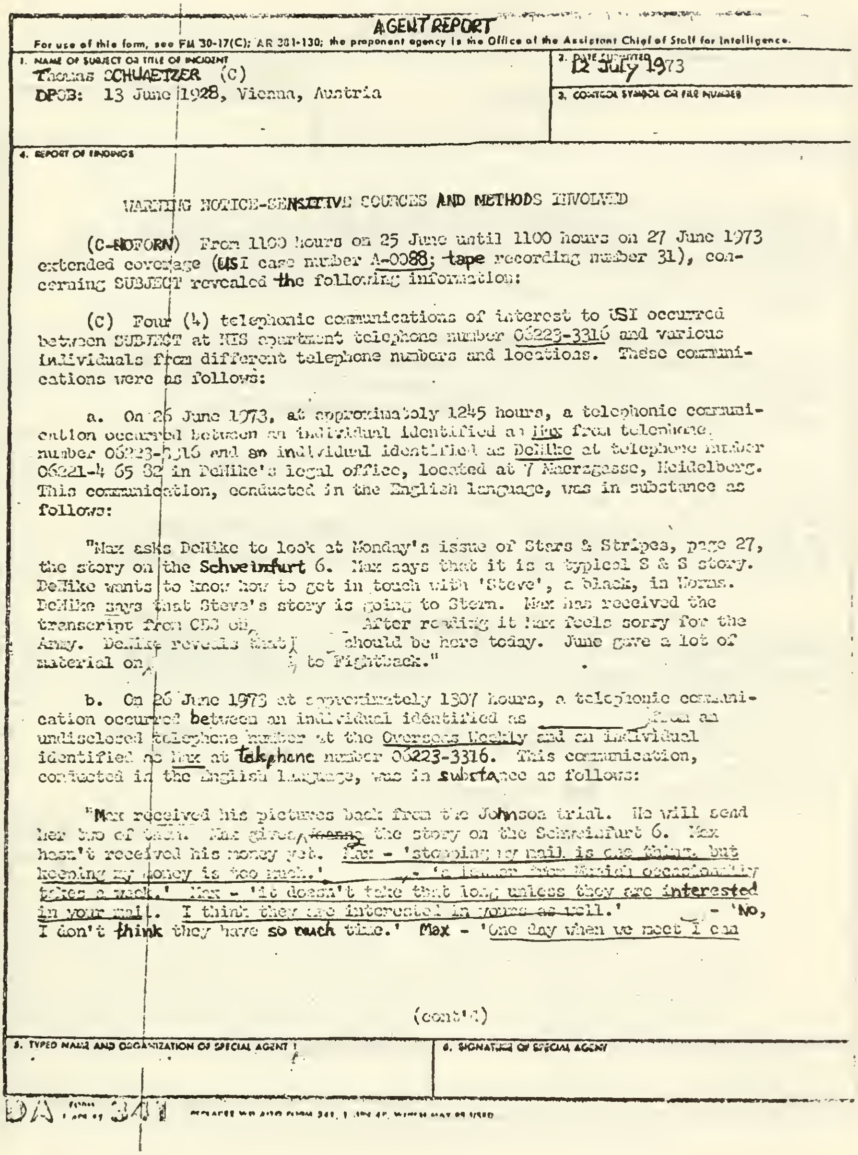
4. REPORT OF FINDINGS

(C) AGENT'S NOTES: Max is a known alias of SCHWAETZER. DeNike is further identified as LMDC attorney Howard DeNike from Heidelberg (MV 7873), Federal Republic of Germany (FRG). is a geologist from Heidelberg who is a close associate of SUBJECT.

Page 3 of 3 Pages

5. TYPED NAME AND ORGANIZATION OF SPECIAL AGENT	6. SIGNATURE OF SPECIAL AGENT

DA FORM 1 APR 57 341 REPLACES WD AGO FORM 341, 1 JUN 47, WHICH MAY BE USED.



AGENT REPORT

For use of this form, see FM 30-17(C); AR 381-130; the proponent agency is the Office of the Assistant Chief of Staff for Intelligence.

1. NAME OF SUBJECT OR TITLE OF INCIDENT Thomas SCHUAETZER (C) DPOB: 13 June 1928, Vienna, Austria	2. DATE SUBMITTED 12 July 1973 3. CONTROL SYMBOL OR FILE NUMBER

4. REPORT OF FINDINGS

WARNING NOTICE-SENSITIVE SOURCES AND METHODS INVOLVED

(C-NOFORN) From 1100 hours on 25 June until 1100 hours on 27 June 1973 extended coverage (USI case number A-0088; tape recording number 31), concerning SUBJECT revealed the following information:

(C) Four (4) telephonic communications of interest to USI occurred between SUBJECT at HIS apartment telephone number 06223-3316 and various individuals from different telephone numbers and locations. These communications were as follows:

a. On 26 June 1973, at approximately 1245 hours, a telephonic communication occurred between an individual identified as Max from telephone number 06223-3316 and an individual identified as DeNike at telephone number 06221-4 65 32 in DeNike's legal office, located at 7 Maerzgasse, Heidelberg. This communication, conducted in the English language, was in substance as follows:

"Max asks DeNike to look at Monday's issue of Stars & Stripes, page 27, the story on the Schweinfurt 6. Max says that it is a typical S & S story. DeNike wants to know how to get in touch with 'Steve', a black, in Worms. DeNike says that Steve's story is going to Stern. Max has received the transcript from CBS on After reading it Max feels sorry for the Army. DeNike reveals that should be here today. June gave a lot of material on to Fightback."

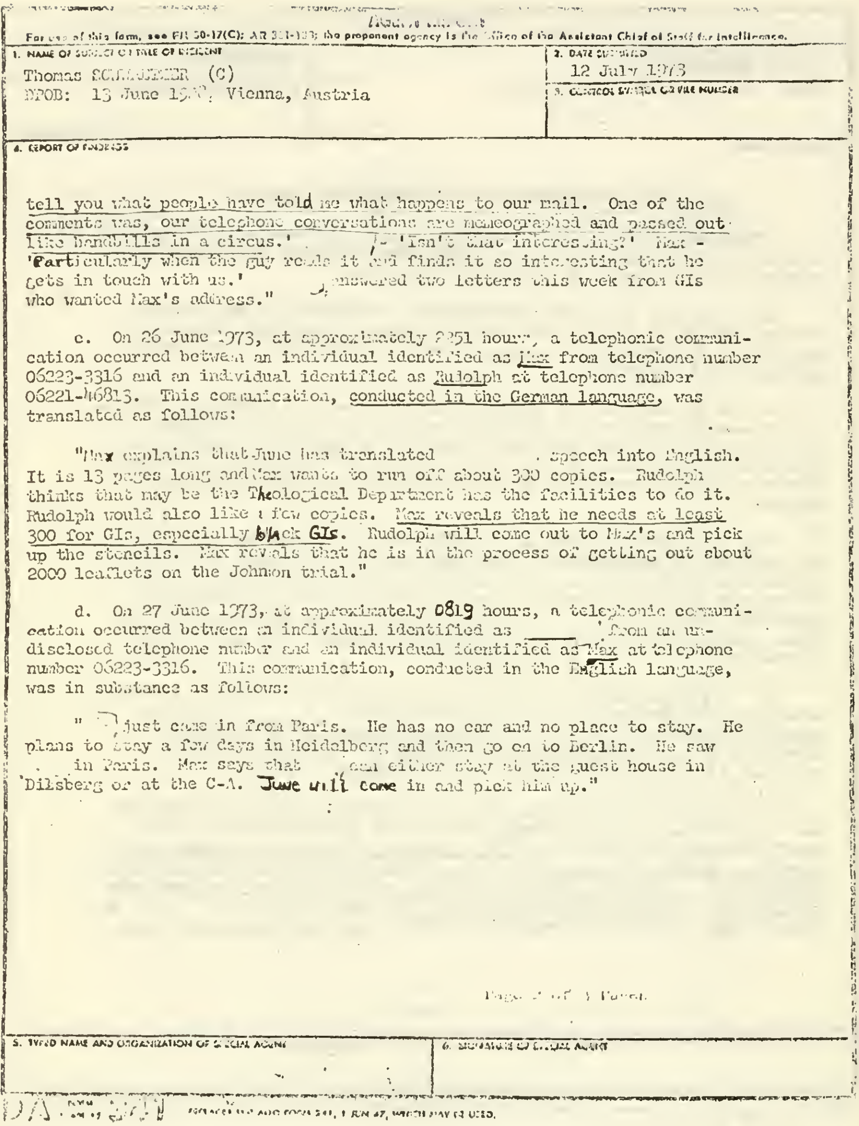
b. On 26 June 1973 at approximately 1307 hours, a telephonic communication occurred between an individual identified as from an undisclosed telephone number at the Overseas Weekly and an individual identified as Max at telephone number 06223-3316. This communication, conducted in the English language, was in substance as follows:

"Max received his pictures back from the Johnson trial. He will send her two of them. Max gives [illegible] the story on the Schweinfurt 6. Max hasn't received his money yet. Max - 'stopping my mail is one thing, but keeping my money is too much.' - 'a letter from Munich occasionally takes a week.' Max - 'it doesn't take that long unless they are interested in your mail. I think they are interested in yours as well.' - 'No, I don't think they have so much time.' Max - 'One day when we meet I can

(cont'd)

5. TYPED NAME AND ORGANIZATION OF SPECIAL AGENT	6. SIGNATURE OF SPECIAL AGENT

DA FORM 1 JAN 67 341 REPLACES WD AGO FORM 341, 1 JAN 47, WHICH MAY BE USED.



AGENT REPORT

For use of this form, see FM 30-17(C); AR 381-130; the proponent agency is the Office of the Assistant Chief of Staff for Intelligence.

1. NAME OF SUBJECT OR TITLE OF INCIDENT

Thomas SCH[illegible] (C)
DPOB: 13 June 19[illegible], Vienna, Austria

2. DATE SUBMITTED

12 July 1973

3. CONTROL SYMBOL OR FILE NUMBER

4. REPORT OF FINDINGS

tell you what people have told me what happens to our mail. One of the comments was, our telephone conversations are memeographed and passed out like handbills in a circus.' - 'Isn't that interesting?' Max - 'Particularly when the guy reads it and finds it so interesting that he gets in touch with us.' answered two letters this week from GIs who wanted Max's address."

c. On 26 June 1973, at approximately 2251 hours, a telephonic communication occurred between an individual identified as Max from telephone number 06223-3316 and an individual identified as Rudolph at telephone number 06221-46813. This communication, conducted in the German language, was translated as follows:

"Max explains that June has translated speech into English. It is 13 pages long and Max wants to run off about 300 copies. Rudolph thinks that may be the Theological Department has the facilities to do it. Rudolph would also like a few copies. Max reveals that he needs at least 300 for GIs, especially black GIs. Rudolph will come out to Max's and pick up the stencils. Max reveals that he is in the process of getting out about 2000 leaflets on the Johnson trial."

d. On 27 June 1973, at approximately 0819 hours, a telephonic communication occurred between an individual identified as from an undisclosed telephone number and an individual identified as Max at telephone number 06223-3316. This communication, conducted in the English language, was in substance as follows:

" just came in from Paris. He has no car and no place to stay. He plans to stay a few days in Heidelberg and then go on to Berlin. He saw in Paris. Max says that can either stay at the guest house in Dilsberg or at the C-A. June will come in and pick him up."

Page [illegible] of [illegible] Pages

5. TYPED NAME AND ORGANIZATION OF SPECIAL AGENT

6. SIGNATURE OF SPECIAL AGENT

DA FORM 1 JAN 59 341 REPLACES WD AGO FORM 341, 1 JUN 47, WHICH MAY BE USED.

AGENT REPORT

For use of this form, see FM 30-17(C); AR 381-130; the proponent agency is the Office of the Assistant Chief of Staff for Intelligence.

1. NAME OF SUBJECT OR TITLE OF INCIDENT
Thomas SCHWAETZER (C)
DPOB: 13 June 1928, Vienna, Austria

2. DATE SUBMITTED
12 July 1973

3. CONTROL SYMBOL OR FILE NUMBER

4. REPORT OF FINDINGS

WARNING NOTICE-SENSITIVE SOURCES AND METHODS INVOLVED

(C-NOFORN) From 1100 hours on 27 June until 1100 on 29 June 1973 extended coverage (USI case number A-0088; tape recording 32) concerning SUBJECT revealed the following information:

(C) Five (5) telephonic communications of interest to USI occurred between SUBJECT at HIS apartment telephone number 06223-3316 and various individuals from different telephone numbers and locations. These communications were as follows:

a. On 27 June 1973, at approximately 1134 hours a telephonic communication occurred between an individual identified as from telephone number 06201-6 34 98 and an individual identified as Max at telephone number 06223-3316. This communication, conducted in the English language, was in substance as follows:

"Rudolph just called her. Max explains that he needs 14 pages run off -- at least 300 copies. She can do it this evening. She lives at Hauptstr. 36 in Weinheim on the first floor. Max will be there at 1700 hours."

b. On 27 June 1973, at approximately 1928 hours a telephonic communication occurred between an individual identified as , from telephone number 06223-3316 and an individual identified as at telephone number 06201-6 34 98. This communication, conducted in the German language, was in substance as follows:

" asks for , who is not at home. would like to visit her on Saturday."

c. On 28 June 1973, at approximately 0906 hours, a telephonic communication occurred between an individual identified as DeNike from telephone number 06221-4 65 82 and an individual identified as Max at telephone number 06223-3316. This communication, conducted in the English language, was in substance as follows:

"DeNike says that there is a letter at LMDC for Max from The letter is short but it is in French. Max wants to leave this afternoon on his eight-day trip. DeNike says that is in Heidelberg. DeNike saw Johnson again yesterday. Max reveals that there was a large story on Johnson in the Berliner Extradienst. is at Max's. Max says that even the servicemen's union has no idea of everything that is happening in Europe.

CLASSIFIED BY [illegible] (Cont'd) [illegible] HANDLING REQUIRED. Not [illegible]

5. TYPED NAME AND ORGANIZATION OF SPECIAL AGENT
EXEMPT [illegible]
[illegible] 66th [illegible] Group

6. SIGNATURE OF SPECIAL AGENT
BY AUTHORITY OF [illegible]

CONFIDENTIAL

AGENT REPORT

For use of this form, see FM 30-17(C); AR 381-130; the proponent agency is the Office of the Assistant Chief of Staff for Intelligence.

1. NAME OF SUBJECT OR TITLE OF INCIDENT
Thomas SCHWAETZER (C)
DPOB: 13 June 1928, Vienna, Austria

2. DATE SUBMITTED
12 July 1973

3. CONTROL SYMBOL OR FILE NUMBER

4. REPORT OF FINDINGS

d. On 28 June 1973, at approximately 1050 hours, a telephonic communication occurred between an individual identified as ________ from telephone number 8 21 61 89 in Berlin and an individual identified as Max at telephone number 06223-3316. This communication, conducted in the German language, was in substance as follows:

" is coming to Berlin. He will arrive on Sunday. Schwinn would like to interview him. Max says that there is a full page article on RITA in the last issue of Democratic German Report. This publication is from the DDR. Max also relays that ____ is in Heidelberg."

e. On 28 June 1973, at approximately 1416 hours, a telephonic communication occurred between an individual identified as ____ from telephone number 06223-3316 and an individual identified as ___ at telephone number 06201-6 34 98. This communication, conducted in the English and German language, is in substance as follows:

" reveals that he is leaving for Berlin Saturday night but would like to see her before he goes. He will come to visit tomorrow night."

(C) AGENT'S NOTES: Max is a known alias of anti-US Army activist Thomas SCHWAETZER. is further identified as ____________, one of the founders of the American Servicemen's Union, has corresponded with SUBJECT in the past. DeNike is further identified as Howard DeNike, an attorney for Lawyers Military Defense Committee (LMDC), Heidelberg ([redacted]), FRG. LMDC offers legal aid to servicemen who do not trust the military judicial system. UTM Coordinates for Weinheim are MV 7689, and Berlin UU 9220. Further identifying data on other personalities is not known at present.

Page 2 of 2 Pages

5. TYPED NAME AND ORGANIZATION OF SPECIAL AGENT

6. SIGNATURE OF SPECIAL AGENT

DA FORM 1 APR 11 341 REPLACES WD AGO FORM [illegible]

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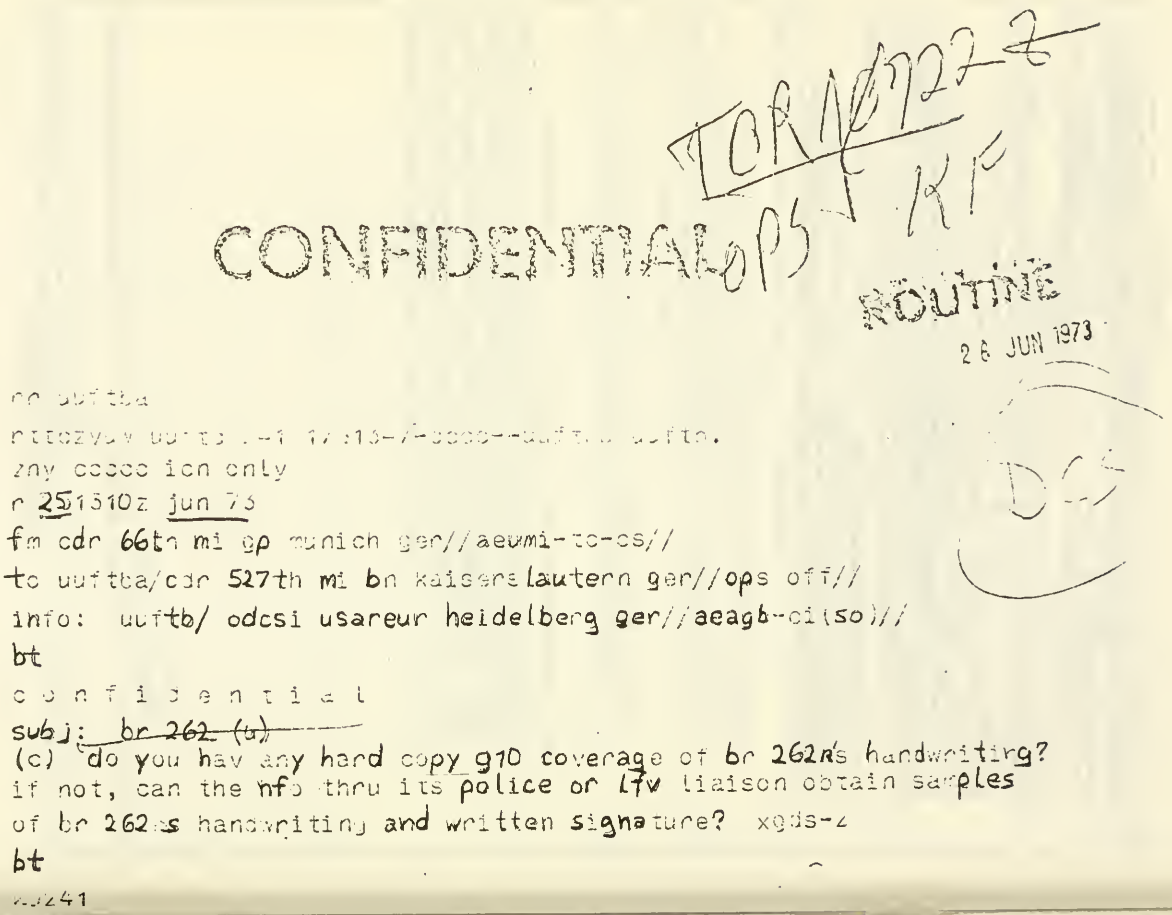
SCHWAETZER.

(C) AGENT'S NOTES: Max is a known aliais of Thomas xxxxxxxxx, xxxxxxxxUSxArmy xxxxxxxxx is a known Communist and radical extremist who has been associated with dissident, black US Soldiers. He is closely affiliated with other extremist groups and is suspected of contacts with hostile intelligence agencies in East Berlin. is further identified as Superior Father of the White Fathers, and has spent 18 years in Mozambique. His appearance was requested by SCHWAETZER at the trial of Larry Vance Johnson, a black US Soldier, who is currently xxxxxxxxxxx detained at the US Army Detention Facility, Mannheim (MV 6282), FRG. DeNike is further identified as Howard DeNike, an attorney working at LMDC office in Heidelberg (MV 7873), FRG. Lucy is further identified as xxxxxx Jonelle DeNike, nee Soon, wife of Howard DeNike. xxxxxxxxxfurther identifying data on individual referred to as is available in xxxxxxxxxxxxxxxx 527th MI Bn Ltr dated is a reporter for CBS news in Bonn (LB 6522), FRG. is a reporter for Overseas Weekly who has contacted SUBJECT often in the past with regard to newsworthy items of interest. is a reporter for the New York Times in Bonn. is a reporter for Reuters in Bonn. Identifying data on other personalities in unknown.

Exhibit 8 – Request for a Handwriting Sample



ICR 0922-2

ops KF

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ROUTINE

26 JUN 1973

DCS

rr uuftba

rttczyvw uuftb .-1 17:15-/-cccc--uuftb.u uuftb.

zny ccccc icn only

r 251510z jun 73

fm cdr 66th mi gp munich ger//aeumi-tc-cs//

to uuftba/cdr 527th mi bn kaiserslautern ger//ops off//

info: uuftb/ odcsi usareur heidelberg ger//aeagb-ci(so)//

bt

c o n f i d e n t i a l

subj: ~~br 262 (u)~~

(c) do you hav any hard copy g10 coverage of br 262's handwriting? if not, can the nfo thru its police or lfv liaison obtain samples of br 262's handwriting and written signature? xgds-2

bt

241

DISPOSITION FORM

For use of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.

REFERENCE OR OFFICE SYMBOL AEUTMI-K-DCS	SUBJECT Operational Lead Sheet (U)

TO HEIDELBERG FO

FROM Commanding Officer
527th MI Battalion
ATTN: AEUTMI-K-DCS
APO 09227

DATE 27 Jun 73

CMT 1

SUBJECT: Thomas SCHWAETZER (C)
13 June 1928; Vienna, Austria

SUSPENSE DATE: 6 Jul 73

NR. COPIES REQUIRED:

a. Final 3w and 1g XXXXX

b. Draft ______

Office of Origin: AEUTMI-K-DCS

(C) Thru Police checks and LfV Liaison, obtain sample(s) of SUBJECT'S handwriting and written signature. Conduct check of EMA/AMA for HIS application for temporary resident Permit or other official papers which would bear HIS written signature.

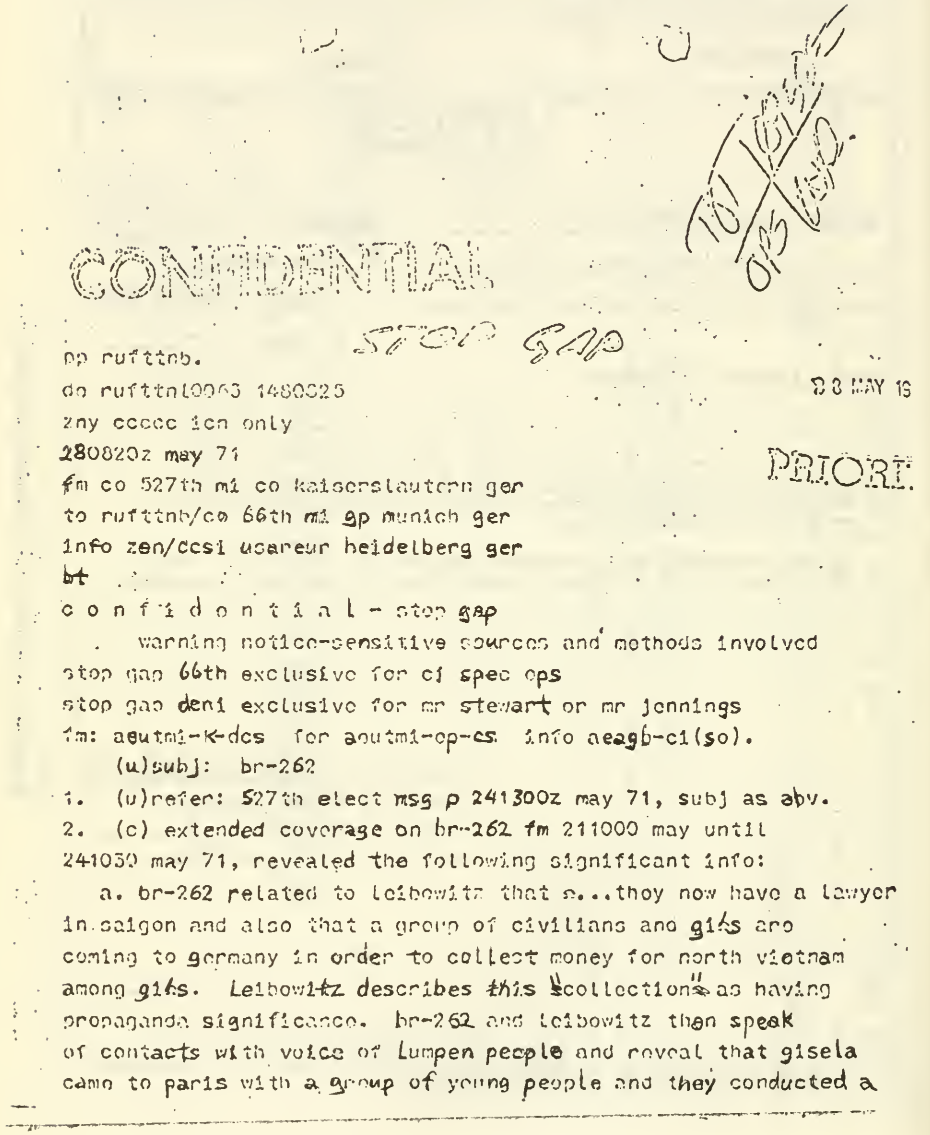
(U) ARs and Exhibits will be forwarded this battalion NLT 6 Jul 73. Final typed format with three (3) white copies and one (1) green copy is required.

CLASSIFIED BY: 66th MI Gp Reg 381-17
EXEMPT FM GDS OF EXO 11652
EXEMPTION CATEGORY 2
DECLASSIFY ON N/A

Page 1 of 1

DA FORM 2496-1 1 FEB 62 REPLACES DD FORM 96 (STENCIL), EXISTING SUPPLIES OF WHICH WILL BE ISSUED AND USED UNTIL 1 FEB 63 UNLESS SOONER EXHAUSTED.

Exhibit 9 – Message Summary of Wiretapped Conversations



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STOP GAP

28 MAY 19

PRIORI

pp rufttnb.
dp rufttnl0063 1480025
zny ccccc icn only
280820z may 71
fm co 527th mi co kaiserslautern ger
to rufttnb/co 66th mi gp munich ger
info zen/ccsi usareur heidelberg ger
bt
confidential - stop gap

warning notice-sensitive sources and methods involved
stop gap 66th exclusive for ci spec ops
stop gap deni exclusive for mr stewart or mr jennings
fm: aeutmi-k-dcs for aeutmi-op-cs info aeagb-ci(so).
(u)subj: br-262

1. (u)refer: 527th elect msg p 241300z may 71, subj as abv.

2. (c) extended coverage on br-262 fm 211000 may until 241030 may 71, revealed the following significant info:

a. br-262 related to leibowitz that "...they now have a lawyer in saigon and also that a group of civilians and gi's are coming to germany in order to collect money for north vietnam among gi's. leibowitz describes this "collection" as having propaganda significance. br-262 and leibowitz then speak of contacts with voice of lumpen people and reveal that gisela came to paris with a group of young people and they conducted a

page 2 rufttnl0063 confidential-stop gap
came together with leibowitz. br-262 then tells leibowitz that the u.b.s. meets under anna's direction every week on tuesdays.

b. br-262 also contacted   of ow and asked for tele number of   ...br-262 tells him he must contact   because rivkin of the workers defense league is coming here.   tells him to call   on 0611-261647 or   on 0611-445020.

c. br-262 called the goesler mission at 113 albert swhweitzerstrasse in mainz and asks for jim or dave, but gets anna. anna tells him that jim and dave are both on the base...br-262 asks anna to verify whether the american lawyer rivkin could be accommodated at the mission.

d. br-262 again calls the goesler mission and speaks with jim. jim tells br-262 they need more black-panther type literature, because many asked for it. br-262 tells jim to get this directly fm the voice of the lumpon by calling 0611-721526.

page 3 rufttnl0063 confidential-stop gap
br-262 then urges jim to visit   in wiesbaden, taunusstrasse 9 and fix up dave with a girl.

3. (c) cmts: the goesler mission was the address where info contained in refer elect msg was sent fm. g-2, tascom has been requested to determine if on any recent applicants for protestant chaplins for the army which have little or no experience and who have first names of dave or jim. arks to follow. gp-3

bt
#0063

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DOWNGRADED AT 12 YEAR INTERVALS;
NOT AUTOMATICALLY DECLASSIFIED.
DOD DIR 5200.10

Exhibit 10—Operations Plans

Subject: Operation Plan Penguin Monk (U).
Ref: a. 66th MI Gp Reg 381-17
b. FM 30-17
c. FM 30-17A
d. DCSI visit to Mainz Field Office on 12 JUNE 73
1. SITUATION: Again mentions STUCKMANN, DESCRIBES MISSION
d. ASSUMPTIONS:
(1) the Mission induces AWOL
(2) " " supports anti-US activities (subversive)
(3) the German Police and Sec. will honor the immunity of the mission because it is religious
2. MISSION:
a. To determine (1) d above
b. " " (2) d above
c. " " the extent of US FORCES involved with either the mission or the personalities
3. (c) EXECUTION:
a. A spotter system will be established to observe vehicle parking within the confines of the mission. The spotter will be stationary/walking/vehicular. He will record on tape or paper license nos. the spotter system will be on a 24 hr. basis.
b. check for owners (Plate nos) RACs on owners.
c. US personnel MASs/LACs
d. COORDINATION: LWR MzFO, LLO Bh./Pz
"At no time will the Goessner mission be mentioned to the German authorities"
4. LOGISTICS AND ADMIN:
a. Personnel: three US S/A and one LWR from MzFO will be utilized to man fixed and mobile surveillance positions during this operation.
b. EQUIP: 3 VW bugs with quick change plates LLO R/P & MzFO
g. attempt to gain admission into private residence in proximity to mission to FOTO
h. attempt to penetrate by a 1663
j. solicit info through 165
k. coordinate with OFD to obtain coverages telephone and mail
l. coordinate with ________ in effort to hvg specific collection requ. on the assets they have available to them.
Large dossier mostly on (name deleted)

(Signature block deleted).

OPLAN 2-73
REFERENCES: Letter, 66th MIG, subject: Concept of Operations
re: BR-262

OPLAN NO: OP(CS)HFO-527-1-73

3. (C) *EXECUTION:*
a. Phase I: Karlsruhe Field Office provides economy accommodation address.
b. Phase II: (1) Initial letters will be posted thru German mail from GI from Karlsruhe area to BR-262 claiming interest in organizing dissident GIs in area but claiming no experience. GI will express fear of discovery by authorities and use this as an excuse for being discreet about his identity or meeting known dissidents. Letter will request reply from BR-262 with suggestions and aid.
c. Phase III: If BR-262 repl to the letters, attempts will be made thru addit corres to
(1) entice BR-262 to make trip(s) to meet GI taking time and costing money
(2) BR-262 can be enticed into making long distance phone calls—numbers prov in corresp will be obtained from local phone books
(3) BR-262 can be enticed into sending literature which might be exploited by USI and costing him money.
(4) BR-262 can be given misleading or false information concerning events and situations in Karlsruhe which if he disseminates, will result in his embarrassment.

HEADQUARTERS, 8TH INFANTRY DIVISION,

Exhibit 11—8th Infantry Division (USAREUR) Regulation 381–25

23 July 1973.

MILITARY INTELLIGENCE

COUNTERDISSIDENCE PROGRAM

1. Purpose: To establish a program for implementing a coordinated counterdissidence effort within the 8th Infantry Division.

2. General: A Counterdissidence Program will enable all major subordinate commanders to recognize, report, and combat dissidence within their units.

3. Responsibilities:

a. The Assistant Chief of Staff, G2, will have the overall responsibility to monitor this program and:

(1) Insure coordination with SJA, PM, CID, EOSO, and MI for completion of necessary actions.

(2) Insure the accurate and timely reporting of dissident incidents throughout the division.

(3) Complete division-wide reports for analysis to aid in pinpointing potential trouble areas and prevent further dissident activities.

(4) Provide commanders with guidance regarding the handling of problem areas of dissident activities.

b. Brigade and battalion S2's will have the primary responsibility for the implementation of the counterdissidence program and:

(1) Insure the accurate and timely reporting of dissident incidents in their units.

(2) Insure coordination with the local SJA, CID, PM, EOSO, and MI.

(3) Compile and analyze dissident activities.

(4) Keep brigade/battalion commanders aware of the "dissident climate" to aid commanders in implementing offsetting programs.

4. Reporting Procedures:

a. Information on dissident activities should be sent by the most expedient methods to local counterintelligence agents of the 8th MI Company.

b. See Annex A, Essential Elements of Information (EEI).

5. Indicators of Dissidence: See Annex B.

6. Definitions: See Annex C.

7. Regulatory Guidance on Dissidence: See Annex D.

(The proponent agency of this regulation is the Assistant Chief of Staff, G2. Users are invited to send comments to Commander, 8th Infantry Division. ATTN: AETHGB, APO 09111.)

ANNEX A

ESSENTIAL ELEMENTS OF INFORMATION

1. All acts of sabotage or vandalism directed against US installations and property. Incidents of suspected sabotage.

2. Theft or disappearance of weapons, ammunition, or explosives.

3. Penetration of secure areas such as arms rooms, motor pools, etc.

4. Demonstrations, teach-ins, and other activities with anti-US themes engaged in by local nationals or military personnel.

5. Unauthorized meetings or authorized meetings with controversial topics.

6. Serious incidents and crimes with racial overtones or motives, including assaults by members of one racial group upon members of another.

7. Efforts by dissident or subversive influences (military or civilian) to promote disaffection or dissidence among military personnel.

8. Distribution of unauthorized publications.

9. Formation of groups with controversial purposes or racially exclusive membership.

10. Rumors of meetings, demonstrations, confrontations, or acts of sabotage or violence.

11. Full names, SSAN, ranks, units, and races of individuals involved in any of the above listed activities.

ANNEX B

INDICATORS OF DISSIDENCE

1. Complaints to NCO's, officers, IG, news media, or congressmen about living conditions, harassment, unfair treatment, etc.

2. Frequent circumvention of chain of command or use of extra-chain of command vehicles such as "spokesmen" to voice grievances.
3. Unauthorized meetings, formation of groups intended to address grievances, demonstrations, mass "sick-calls", or sit-downs.
4. Frequent minor acts of insubordination or insolence, such as failure to salute or slow reaction to direct orders.
5. Presence on post of civilian extremists or attendance by personnel at extremist meetings held off post.
6. Distribution of underground newspapers.
7. Dissident graffiti—slogans or signs surreptitiously painted on buildings, vehicles, and equipment.
8. Vandalism or sabotage of government property.
9. Confrontations with symbols of authority.
10. Escalation of minor incidents, exaggeration of incidents to provoke troop reaction, circulation of rumors.
11. Agitation by military personnel or by civilians.

ANNEX C

DEFINITIONS

DISSATISFACTION: Attitude of discontent toward a particular issue or situation.

DISAFFECTION: Attitude of discontent toward government or military.

UNREST: Manifestation of dissatisfaction or disaffection but not necessarily politically or ideologically oriented.

DISSIDENCE: Manifestation of a rejection of military, political, or social standards.

ANNEX D

REGULATORY GUIDANCE ON DISSIDENCE

The following general guidelines are extracted from regulations and directives as indicated:

1. Possession and Distribution of Political Materials:

a. United States Armed Forces personnel will not distribute pamphlets, newspapers, magazines, handbills, flyers, or other similar material on any military installation except through regularly established and approved distribution outlets (c below) unless approval is first obtained from the appropriate installation commander and responsible community leader (para 23, USAREUR Reg 632–10).

b. The following materials are exempted from the prohibitions and requirements of paragraph 1a (para 23, USAREUR Reg 632–10).

(1) Advertising or promotional materials of licensed solicitors (when permitted in accordance with para 8a(1), Annex A, USAREUR Reg 210–70 or other applicable directives), military banking facilities, and credit unions.

(2) Materials produced or selected for distribution by the US Army or other US government organizations, nonappropriated fund activities, concessionaires, and private associations recognized in accordance with AR 230–1.

(3) Materials distributed to students and prospective students by educational institutions offering training through Army education centers.

(4) Materials accepted as gifts for distribution to individuals in accordance with AR 1–101.

(5) Materials delivered to individual recipients by US or foreign postal facilities as long as those materials remain solely in the possession and control of the postal addressee.

c. Regularly established and approved distribution outlets are libraries, unit dayrooms, service clubs, chapels, Stars and Stripes newsstands, EES facilities, and commissaries, provided that procedure established for distribution in such outlets have been followed and that no request for the approval of any responsible community leader or installation commander for any type of distribution has been previously denied (para 23, USAREUR Reg 632–10).

d. Distribution of literature by non-members of US Forces.

(1) Section 89 of the German Criminal Code makes it a crime for persons to undermine the dutiful readiness of a member of the Bundewehr to protect the security of the Federal Republic of Germany. The fourth amendment to the

Criminal Code extends Section 89 by making it a crime to undermine the dutiful readiness of members of a NATO force.

(2) The elements necessary to establish a violation of Section 89 are:

(a) That undermining of the dutiful readiness of a member of the Forces to protect the security of the Forces occurred.

(b) That such undermining was done in a systematic manner.

(c) That the undermining was intentional.

(2) The element of the "undermining the readiness" of the Forces could be established by the statement from competent US authorities that the actions concerned, such as distribution of racially oriented literature of an inflammatory nature advocating disruptive acts, undermines the morale and readiness of US Forces. The element of intent quite likely could be established by nature of such publications. Proof that the act was done in a systematic manner appears to be the most difficult. Any evidence of "systematic distribution" to be furnished by US authorities could be of such nature that the evidence can be made known and the witnesses made available to testify in a public hearing.

(4) Liaison with the proper German authorities should be accomplished through the US Local Liaison Authority for the area concerned (USAREUR Reg 550–56).

e. Publication of "Underground Newspapers," Army Regulation 360–5, provides that personal literary efforts may not be pursued during duty hours or accomplished by the use of Army property. However, the publication of "underground newspapers" by soldiers off-post on their own time and with their own money and equipment is generally protected under the First Amendment's guarantee of freedom of speech and freedom of the press. Unless such a newspaper contains language, the utterance of which is punishable under Federal law (e.g. 10 U.S.C. Sec. 2387 or the UCMJ), authors of an "underground newspaper" may not be disciplined for mere publication. Distribution of such newspapers on post is governed by para 5–5, AR 210–10, and USAREUR Suppl 1 to AR 210–10, dated 14 Dec 71.

2. Attendance at Meetings and Demonstrations.

a. Any gathering for any purpose which interferes with accomplishment of the command's mission or which is detrimental to the loyalty, discipline, or morale of its personnel is undesirable whether off-post or on-post. Commanders will prohibit gatherings where objectives are incompatible with this command's mission. If they are to be held on post and, should such meetings be held off-post, will take whatever legally permissible measures are necessary to discourage attendance by personnel of their commands. Participation by Army personnel, in or out of uniform, in public demonstrations in the Federal Republic of Germany is prohibited. Any encouragement, written or oral, for servicemen to participate in unauthorized public gatherings is a disservice to this command. (USAREUR letter AEACG, dated 4 August 1970, subject: Demonstrations and Public Gatherings by USAREUR personnel).

b. Meetings on Military Installations. Personnel will not participate in, hold, or cause to be held any assembly, gathering, or meeting on a military installation unless (1), (2), or (3) below applies:

(1) It is official in nature, i.e., held or sponsored by an agency or instrumentality of the US Government.

(2) It is held or sponsored by an officially recognized private association within the meaning of paragraph 1–3f, AR 230–1.

(3) It is specifically approved in advance by the responsible USAREUR community leader (USAREUR Reg 10–20) or his authorized designee or, outside FRG or in Berlin, by the appropriate installation commander (para 26, USAREUR Reg 632–10).

c. Off-Post Demonstrations by Soldiers. AR 600–200 and 600–21 prohibit members of the Army from participating in off-post demonstrations when they are in uniform or on duty or in the Federal Republic of Germany or when their activities constitute a breach of law and order or when violence is likely to result (DA letter AGAM–P(M) (27 May 69) DCSPER-SARD, dated 28 May 1969. subject: Guidance on Dissent).

(Remainder omitted as irrelevant.)

○

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